A learned and necessary ARGUMENT

To prove that each Subject hath a Propriety in his Goods.

Shewing also

The extent of the Kings Prerogative in Impositions upon the Goods of Merchants exported and imported, out of and into this Kingdome.

Together with a Remonstrance presented to the Kings most excellent Majesty, by the honourable House of Commons, in the Parliament holden *Anno Dom.* 1610. *Annoq; Regis Jacobi*, 7.

By a late learned Judge of this Kingdome.

LONDON,
Printed by *Richard Bishop* for *Thomas Slater*, and are to be sold at his shop at the signe of the Swan in Duck-lane, 1641.

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To the Courteous Reader.

THis excellent Treatiſe of the no leſſe worthy Author, happily falling into my hands, I inſtantly thought it my duty to make that publick, which had given ſo much uſefull ſatisfaction to many learned, and judicious, in private; remembring that ancient Adage, Bonum quò communius, eò præſtantius.

I hope it is needleſſe to commend either the Reverend Author deceaſed, the Treatiſe, its uſe, or ſtile; ſince the Authority by which it is publiſhed, is a ſufficient argument of their knowne worth.

If thou kindly accept his goodmeaning, whoſe only ayme in the publiſhing hereof was the Common good, it will be an encouragement to him (and others) to preſent to thy view, what may hereafter fall into his hands worthy thy further peruſall.

Thine; *I. B.*

20. *Maii*, 1641.

AT a Committee appointed by the Honourable Houſe of Commons, for examination of Books, and of the licencing, and ſuppreſſing of them, &c.

It is ordered, that this Treatiſe be publiſhed in Print.

Sir EDWARD DERING,
Knight and Baronet.

A Remonſtrance delivered to his Majeſtie in writing, after the inhibition given by him to the Commons houſe of Parliament, aſwell by word of mouth, as by letters, not to proceed in the examining his right to impoſe without aſſent of PARLIAMENT.

To the Kings moſt excellent Majeſty.

Moſt gracious Soveraigne,

WHereas we your Majeſties moſt humble Subjects, the Commons aſſembled in Parliament, have received firſt by meſſage, and ſince by ſpeech from your Majeſty a command of reſtraint, from debating in Parliament your Majeſties right of impoſing upon your ſubjects goods exported, or imported out of, or into this Realme: yet allowing us to examine the greivance of theſe impoſitions in regard of quantity, time, and other Circumſtances of diſproportion thereto incident: We your ſaid humble Subjects nothing doubting but that your Majeſty had no intent by that Command to infringe, the ancient and fundamentall right of the Liberty of Parliament in point of exact diſcuſſing of all matters concerning them, and their poſſeſsions, goods and rights whatſoever, which yet we cannot but conceive to be done in effect by this com-

mand, doe with all humble duty make this Remonſtrance unto your Majeſty.

Friſt, we hold it an ancient, generall, and undoubted right of Parliament, to debate freely all matters which doe properly concerne the ſubject, and his right or eſtate; which freedome of debate being once fore-cloſed, the eſſence of the liberty of Parliament is withall diſſolved.

And whereas in this caſe the ſubjects right on the one ſide, and your Majeſties prerogative on the other, cannot poſſibly bee ſevered in debate of either; Wee alledge that your Majeſties Prerogatives of that kinde concerning directly the ſubjects right and intereſt, are daily handled and diſcuſſed in all Courts at Weſtminſter, and have been ever freely debated upon all fit occaſions, both in this and all other former Parlialiaments, without reſtraint; which being forbidden, it is impoſſible for the ſubject, either to know, or to maintaine his right and propriety to his owne lands and goods, though never ſo juſt and manifeſt.

It may further pleaſe your moſt excellent Majeſty to underſtand, that wee have no minde to impugne, but a deſire to informe our ſelves of your Highneſſe Prorogative in that point, which (if ever) is now moſt neceſſarie to be knowne; and though it were to no other purpoſe, yet to ſatisfie the generalitie of your Majeſties Subjects, who finding themſelves much grieved by theſe new impoſitions, doe languiſh in much ſorrow and diſcomfort.

Theſe reaſons (Dread Soveraigne) being the proper reaſons of Parliament, doe plead for the upholding of this our ancient Right and Libertie. Howbeit ſeeing it hath pleaſed your Majeſtie to inſiſt upon that judgement in the Exchequer, as being direction ſufficient for us without further examination: Upon great deſire of leaving your Majeſty unſatisfied in no one point of our intents

tents and proceedings, We profeſſe touching that judgement, that wee neither doe nor will take upon us to reverſe it; but our deſire is to know the reaſons whereupon the ſame was grounded; and the rather for that a generall conceit is had, That the reaſons of that judgement may bee extended much further, even to the utter ruine of the ancient liberty of this Kingdome, and of your ſubjects right of proprietie to their goods and lands

Then for the judgement it ſelfe, being the firſt and laſt that ever was given in that kind (for ought appearing unto us,) and being onely in one Caſe, and againſt one man, it can binde in law no other, but that perſon; and is alſo reverſible by Writ of errour granted heretofore by act of Parliament. And neither he nor any other ſubject is debarred by it, from trying his right in the ſame or like caſe, in any of your Majeſties Courts of Record at Weſtminſter.

Laſtly, we nothing doubt, but our intended proceeding in a full examination of the right, nature, and meaſure of theſe new impoſitions (if this reſtraint had not come betweene) ſhould have been ſo orderly and ſo moderately carried and employed to the manifold neceſſities of theſe times, and given your Majeſty ſo true a view of the ſtate and right of your ſubjects, that it would have been much to your Majeſties content and ſatisfaction, (which wee moſt deſire,) and removed all cauſes of feares and jealouſies from the loyall hearts of your Subjects, which is (as it ought to bee) our carefull endeavour: whereas contrariwiſe in that other way directed by your Majeſtie, wee cannot ſafely proceede without concluding for ever the right of the ſubject, which without due examination thereof wee may not doe.

Wee therefore your loyall and dutifull Commons, not ſwarving from the approved ſteps of our Anceſtours, moſt

humbly and inſtantly beſeech your gracious Majeſtie, that without offence to the ſame, we may, according to the undoubted right and liberty of Parliament, proceede in our intended courſe of a full examination of theſe new impoſitions: That ſo wee may cheerefully paſſe on to your Majeſties buſineſſe, from which this ſtop hath by diverſion ſo long withheld us. And we your Majeſties moſt humble, faithfull, and loyall Subjects, ſhall ever (according to our bounden duty) pray for your Majeſties long and happy reigne over us.

The

The question is, whether the King, without assent of Parliament, may set impositions upon the wares, and goods of merchants exported, and imported, out, of, and into, this Realme.

THree things have been debated in this Parliament, that have much concerned the right of our whole Nation, of which every one of them hath exceeded the other by a gradation in waight and moment.

The first, was the change of our name, which was a point of honour, wherein we shewed our selves not willing to leave that name, by which our ancestors made our Nation famous: yet have we lost it, saving onely in those cases where our ancient and faithfull protector, the Common Law doth reteine it.

The name of Britaine not admitted in legall proceedings.

The second was the union; a question of greater moment, for that concerned the freehold of our whole Nation, not in so high a point as having, or not having; but in point of Division & participation, that is, whether we should enjoy the benefits, and liberties of the kingdome our selves onely as we and our ancestors have done, or admit our neighbour Nation to have equall right in them, and so make our owne part the lesse, by how much the greater number should be among whom the Division was to be made. This was adjudged against us both Legally and solemnly, and therefore in that we rest, hoping of that effect of this judgement which we read of in the Poet:

Coke 7. Calvins case.

Virgil Æneid. l. 1. Dido's speech to Æneas.

Tros Tyriusque mihi nullo discrimine habetur.

The third is the question now in hand, which exceedeth the other two in importance and consequence, concerning

the whole kingdome, for it is a queſtion of our very eſſence, not what we ſhall be called, nor how we ſhall divide that we have, but whether we ſhall have any thing or nothing: for if there be a right in the King to alter the property of that which is ours without our conſents, we are but tenants at his will of that which we have. If it be in the King and Parliament: Then have we propertie, and are tenants at our owne will: for that which is done in Parliament is done by all our wills and conſents. And this is the very ſtate of the queſtion which is propoſed, that is, whether the King may impoſe without conſent of Parliament.

Impoſitions are of two natures, *Forreine* and *Inteſtine*.

Inteſtine be thoſe, which are raiſed within our land in the commerce and dealing that is at home within our ſelves, and may aſwell for that reaſon be ſo called, as for that *veſcuntur inteſtinis Reipublicæ*, They are fed, and nouriſhed with the conſuming and waſting of the entralls of the Common wealth. Againſt theſe I neede not to ſpeake; for the Kings learned Counſell have with great honour and conſcience in full Councell acknowledged them to be againſt the law.

Therefore I will apply my ſelfe to ſpeake of impoſitions forreine, being the ſingle queſtion now in hand, and maintained on the Kings behalfe with great art and eloquence.

The inconvenience of theſe impoſitions to the Commonwealth, that is, how hurtfull they are to the Merchants, in impoveriſhing them in their eſtates; to the King in the increaſing of his revenues by decay of traffique, and to the whole people in making all commodities exceſſive deare, is confeſſed by all; and therefore need no debate. The point of right is now only in queſtion, and of that I will ſpeak with conſcience and integrity, rather deſirous that the truth may be knowne, and right be done, than that the opinion of my ſelfe, or any other may prevaile.

The occaſion of this queſtion was given by the book of rates lately ſet out, affronted with the copy of Letters Patents, dated *July* 28. 6. *Jac.* In which book, beſides the rates,

rates, is ſet downe upon every kinde of merchandiſe, exported and imported, for the true anſwering of ſubſidy to the King, according to the Statute of tonnage and poundage. In the firſt yeare of his reigne there is an addition of impoſitions upon all thoſe kinde of wares, which within the book are expreſſed, and the rate of the impoſition as high and in ſome eaſes higher, than the rate of the ſubſidy: And this declared to be by authority of thoſe Letters Patents. Heare-upon conſidering with my ſelfe, that heretofore the ſetting on of one only impoſition without aſſent of Parliament, upon ſome one kinde of merchandiſe, and that for a ſmall time, and upon urgent neceſſity of actuall warre, did ſo affect our whole Nation, and eſpecially the great Councell of the Parliament, being the repreſentative body of the whole Common-wealth; that neither the ſunne did ſhine, nor the rivers runne their courſes, untill it was taken off by the publick judgement of the whole State. I thought it concerned me, and other members of that Councell, that were no leſſe truſted for our countreys, than thoſe in former times, and have their actions to guide and direct us, to have the ſame care they had in preſerving the right, and liberties of the people, having now more cauſe then they had, for that the impoſitions, now ſet on without aſſent of Parliament, are not upon one or two ſpeciall kindes of goods, but almoſt indefinite upon all, and doe extend to the number of many hundreds, as appeareth by that printed book of rates, and are ſet in charge upon the whole kingdome, as an inheritance to continue to the King, his heires and ſucceſſours for ever: which limitation of eſtate in matter of impoſitions was never heard of, nor read of before as I conceive.

The inducements expreſſed in theſe Letters Patents are much upon point of State, and with reference to the rights and practiſe of forraine princes; For this I will not take upon me to enter into the conſideration of ſuch great miſteries of policie, and governement. but will only put you in minde of that I obſerve out of *Tit. Livius* the Romane *Hiſtoriographer*: *Omnem divini, humanique moris memoriam abolemus,* Tit. Liu. l. 8

abolemus, cum novâ peregrinâque patriis, & priscis præferimus.

To that which hath been spoken for the Kings Prerogative, I will give answer to so much of it, as I may conveniently in my passage through this debate: wherein I will principally endevour to give satisfaction to such new objections, as were made by the worthie and learned Counselor of the King that spake last, in maintenance of his Maiesties Prerogative.

Pat. July 28. *Iac.* 6. The case in termes is this: The King by his Letters Patents before recited hath ordained, willed, and commanded that these new impositions contained in that booke of rates shalbe for ever hereafter payd unto him, his heires, and successors, upon paine of his displeasure: Herevpon the question ariseth whether by this Edict and Ordinance so made by the King himselfe, by his Letters Patents of his owne will and power absolute, without assent of Parliament, he be so lawfully intituled to that he doth impose, as that thereby he doth alter the property of his subjects goods, and is enabled to recover these impositions by course of Law.

I think he cannot; and I ground my opinion upon these foure reasons.

1 It is against the naturall frame and constitution of the policie of this kingdome, which is *jus publicum regni*, and so subverteth the fundamentall Law of the Realme, and induceth a new forme of state and goverment.

2 It is against the municipall Law of the Land, which is *jus priuatum*, the Law of property and of private right.

3 It is against Divers statutes made to restraine our King in this point.

4 It is against the practice and action of our Common wealth, *contra morem majorum*; and this is the modestest rule to limit both Kings Prerogatives, and subiects liberties.

Upon the first, and fourth of these foure principall grounds I will more insist then upon the second and third, both for that in their owne nature they are a more proper matter for a Councell of State, to the judgement of which I apply my discourse (and they have not beene enforced by others:) As also for that the other two (as more fit for a barre, and the

the Courts of ordinary juſtice) have by ſome profeſſors of the Law beene already moſt learnedly, and exquiſitely diſcuſſed.

For the firſt: it will be admitted for a rule, and ground of State, that in every Common-wealth and government, there be ſome rights of Sovereignty, *jura Majeſtatis*, which regularly, and of common right doe belong to the Soveraign power of that State; unleſſe Cuſtome, or the proviſionall ordinance of that State doe otherwiſe diſpoſe of them: which Soveraigne power is *poteſtas ſuprema*, a power that can controule all other powers, and cannot be controuled but by it ſelfe.

It will not be denied, that the power of impoſing hath ſo great a truſt in it, by reaſon of the miſchiefes may grow to the Common-wealth by the abuſes of it, that it hath ever beene ranked among thoſe rights of Soveraigne power.

Then is there no further queſtion to be made, but to examine, where the Soveraigne power is in this Kingdome; for there is the right of impoſition?

The Soveraigne power is agreed to be in the King: but in the King is a twofold power; the one in Parliament, as he is aſſiſted with the conſent of the whole State; the other out of Parliament, as he is ſole, and ſingular guided merely by his owne will. And if of theſe two powers in the King one is greater than the other, and can direct and controule the other; that is, *Suprema Poteſtas*, the Soveraigne Power, and the other is *ſubordinata*.

It will then be eaſily proved, that the power of the King in Parliament is greater than his power out of Parliament, and doth rule and controule it; for if the King make a grant by his Letters Patents out of Parliament, it bindeth him and his ſucceſſours, he cannot revoke it, nor any of his ſucceſſours; But by his power in Parliament he may defeate and avoyd it; and therefore that is the greater power.

If a judgement be given in the Kings Bench, by the King himſelfe (as may be, and by the Law is intended) a writ of Errour, to reverſe this judgement, may be ſued before the King in Parliament, which writ muſt be granted by the

Chancellor, upon bill indorſed by the King himſelfe, as the book is 1 *H.*7. 19. 6. And the forme of the writ of Error is, that it being directed to the Chiefe Juſtice of the Kings Bench, *Quia in recordo & proceſſu, ac etiam in redditione judicii loquelæ quæ fuit in Curiâ noſtrâ coram nobis, Error intervenit manifeſtus ad grave damnum, &c. Nos errorem (ſi quis fuerit) modo debito corrigi, & partibus prædictis plenam & celerem juſtitiam fieri volentes, in hâc parte vobis mandamus, quòd Recordum & proceſſum loquelæ illius cum omnibus ea tangentibus, in præſens Parliamentum noſtrum ſub ſigillo tuo diſtinctè & aperte mittas, & hoc breve, ut inſpectis, &c. nos de Conſilio & adviſamento Dominorum ſpiritualiũ & temporalium, ac Communitatis in Parliamento noſtro prædicto exiſtentis, ulterius pro errore illo corrigendo fieri faciamus quod de jure & ſecundum legem & conſuetudinem Regni noſtri Angliæ fuerit faciendum.* So you ſee the Appeale is from the King out of the Parliament, to the King in Parliament; the writ is in his name; the rectifying and correcting the errours is by him, but with the aſſent of the Lords, and Commons, than which there can be no ſtronger evidence to prove, that his power out of Parliament is ſubordinate to his power in Parliament; for in Acts of Parliament, be they lawes, grounds, or whatſoever elſe, the Act and power is the Kings, but with the aſſent of the Lords and Commons, which maketh it the moſt ſoveraigne and ſupreame power above all, and controllable by none. Beſides this right of impoſing, there be others in the Kingdome of the ſame nature: As the power to make lawes; the power of Naturalization; the power of erection of arbitrary government; the power to judge without appeale; the power to legitimate: all which doe belong to the King only in Parliament. Others there be of the ſame nature, that the King may exerciſe out of Parliament, which right is growne unto him in them, more in thoſe others by the uſe and practice of the Common-wealth: as denization, coynage, making warre: which power the King hath time out of minde practiſed, without the gain-ſaying and murmuring of his ſubjects: But theſe other powers before mentioned have ever beene executed

1 *H.*7. 19. 6

Lib. Intrac. fol. 302. col.

The book is not ſo, that the Cõmons ſhould meddle.

executed by him in Parliament, and not otherwiſe, but with the reluctation of the whole Kingdome.

Can any man give me a reaſon, why the King can only in Parliament make lawes? No man ever read any law, whereby it was ſo ordained; and yet no man ever read that any King practiſed the contrary: Therefore it is the originall right of the Kingdome, and the very naturall conſtitution of our State and policy, being one of the higheſt rights of ſoveraigne power: So it is in naturalization, legitimation, and the reſt of that ſort before recited.

It hath been alleaged that thoſe which in this Cauſe have enforced their reaſons from this Maxime of ours (*That the King cannot alter the Law*) have diverted from the queſtion.

I ſay under favor they have not; for that in effect is the very queſtion now in hand; for if he alone out of Parliament may impoſe, he altereth the Law of England in one of theſe two maine fundamentall points. He muſt either take his Subjects goods from them, without aſſent of the party, which is againſt the Law; or elſe he muſt give his owne Letters Pattents, the force of a Law, to alter the property of his ſubjects goods, which is alſo againſt the Law.

That the King of England cannot take his ſubjects goods, without their conſent, it need not be proved more then a principall; it is *jus indigena* an old homeborne right, declared to be Law by divers ſtatutes of the Realme: As in 34. E. 3. cap. 2. That no office of the Kings, or of his heires, ſhall take any goods of any manner of perſon without the aſſent and good will of the party, to whom the goods belonged. The ſame is declared in many other ſtatutes made againſt priſages and purveyances. Neither have ever any Kings attempted to go plainly & directly againſt that right; but have deviſed certaine legall colours and ſhadowes for their wrongfull doing in that kind, which I doe find were of three ſorts: by way of Commiſſion; by way of Loan; by way of Benevolence. Commiſſions of al other were the moſt inſolent; for they went out (as it were by authority to levy ayd of the people upon great neceſſity of the Common wealth) Theſe were condemned in Parliament 21. E. 3. Num. 16.

34. E. 3. c. 2.

Commiſſions, Loans or Privie Scales, Benevolence

Num. 16. upon a grevious complaint made of the uſe of them by the Commons, unto the King in Parliament: wherein the people doe pray the King, that he would be pleaſed to remember how at the parliament held the 17. year of his raign, and at the laſt Parliament, it was then accorded, and granted by their ſaid Lord the King and his counſell, that there ſhould goe out no commiſſions out of chauncery for hobbeleries, Archers, and other charges to be levied upon the people, if they were not granted in Parliament; which ordinances were not obſerved; by reaſon whereof, the people were impoveriſhed and decayed, for which they prayed the King that he would be pleaſed to take pity of his people, and the ordinances and grants made to his people in Parliament to affirme and hold; And that if ſuch Commiſſions goe out without aſſent of Parliament, that the Commons, which are grieved thereby, may have writs of *ſuperſedeas*, according to the ſaid Ordinance, and that the people be not bound to obey them.

That is, the Parliament.

To this the Kings anſwer is:

Si ul tiel impoſition fuit fait per grand neceſſitie, & ceo del aſſent des Prelates, Countes, Barons, & aut grandes & aufomes des Commons adonq; preſents, Neant moins noſtre Seignior le Roy ne voet que tiel impoſition non duement fait, ſoit treit in conſequence, eins voet que les ordinaunces dont ceſt petition fait mention ſoit bienment gardes.

The lateſt time that ever King attempted that courſe of exaction was 17. *H.* 8. upon the taking of the French King at *Pavie*, by the forces of *Charles* the fifth: Cardinall *Wolſey* having a purpoſe to put the King into a warre, about that quarrell, and finding his cophers empty, adviſed this way, to ſend out Commiſſions, and by them to levie ayd of the people, according to the value of their eſtate; But this gave ſuch diſcontent to the whole Realme, that it cauſed in many places an actuall rebellion; and the Cardinall being called to give an account of this bad advice, did juſtifie this fact by the example of *Joſeph*, who adviſed *Pharaoh*

Stowes annals. 17. *H.* 8.

to

to take the fifth part of his subjects goods: But when hee saw that would not serve the turne, he falsely laid it upon the Judges, informing the King, he did it by their advice, being resolved by them of the lawfulnesse of the fact. So you see that great Churchmen found more safety in matter of government of our Common-wealth, in making a false report of a point of the Common-law, than in a true text of the Scripture. And if any Churchmen will endeavour by application of the text of Scripture, to overthrow the ancient lawes, and liberties of the Kingdome, I would advise them to be admonished by the ill successe of the Cardinall, in this particular action, and by the miserable catastrophe of his whole life and fortunes.

Loanes and Privie Seales.

Loanes, and appresta were those, which we call Privie Seales, which though they were more moderate in shew, yet being made against the good will of the parties, were as injurious indeed as the other. The Commons in Parliament, 25. *E.* 3. *Num.* 16. made a grievous complaint to the King against the use of them, and prayed, that none from thenceforth should be compelled to make loans against their will, and they gave this reason in their petition: for that it is against reason, and the franchise of the land; and prayed that restitution might bee made, to those that have made such loanes.

Rot. par. 25. *E.* 3. *num.* 16.

To this the Kings rescript was; *It pleaseth our Lord the King, it be so.*

Benevolence.

Lastly, came in those kinde of exactions, which were termed by the faire name of *Benevolences*; but they became so odious, as they gave the occasion of a good law to bee made against themselves, and against all other shifts, and devices, by what new termes soever imposed upon the subjects: the Law is 1. *R.* 3. *cap.* 2. and is thus: The King remembring how the Commons of this his Realme, by new and unlawfull inventions, and inordinate covetise, against the law of this Realme, have beene put to great servitude, and important charges and exactions, and especially by a new imposition called a Benevolence, enacteth by the advice &c. That the Subjects and Commons of this land from-

1 *R.* 3. *c.* 2.

henceforth ſhall in no wiſe be charged by any ſuch charges, or impoſitions called a Benevolence, nor by ſuch like thing.

But if you will deny, that the King doth in this caſe take the goods of his ſubject without his aſſent, then you muſt fall upon mine other alternative propoſition; That the Kings Patent hath in this caſe the power of a law, to alter property: for how can he recover the impoſed by a legall courſe of proceeding, and by judgement in his Court, but upon a title precedent him, before the action brought, which title muſt bee a property in the ſame impoſed? and how cometh he by that property, but by his owne Letters Patents, by which he declareth he will have that ſame as an impoſition? For the judgement giveth not the right, but only doth manifeſt and declare it, and giveth execution of it: So in this point, the queſtion is, whether the Kings Patent hath the force and power of the Law, or not: for if it bee not maintained that it hath, it can never be concluded, that he can transferre the property of his ſubjects goods to himſelfe, without the aſſent of them; for *quod meum eſt, ſine facto meo alterius fieri non poteſt.* And if you give this power to the Kings Patent, you ſubject the law, and take away all rules and bounds of ſetled government, and leave in the ſubject no property of his owne, neither doe you by this advance the Kings power and prerogative, but you make him no King; for as *Bracton* ſaith, *Rex eſt ubi dominatur lex, non voluntas.*

Bracton *l.1. c.8.*

So we ſee that the power of impoſing, and power of making Lawes are *convertibilia & coincidentia*; and whoſoever can doe the one, can doe the other; And this was the opinion of Sir *John Forteſcue* that reverend and honourable Judge, a very learned profeſſor of the Common Law, and chiefe Juſtice of the Kings Bench, in the time of *Henry 6.* His words are theſe in his book, *De laudibus Legum Angliæ cap. 9. Non Poteſt Rex Angliæ ad libitum leges mutare regni ſui; principatu namque vedum regali, ſed & politico ipſe dominatur: Si regali tantum præſſet iis, leges mutare poſſet; tallagia quoque, & catera onera imponere, ipſis inconſultis, quale dominium leges civiles indicant, cum dicunt quod principi placuerit,*

Forteſcu *de laudibus Leg. Ang. cap. 9.*

cuerit, legis habet vigorem; sed longè aliter potest Rex politicis imperans, quia nec leges ipse sine subditorum assensu mutare poterit, nec Subjectum populum renitentem onerare peregrinis impositionibus. In which place I muſt intepret unto you, that *peregrina impoſitiones* be not ſtrange and unheard of impoſitions, as was urged by the worthy gentleman that ſpake laſt; but impoſitions upon traffique into, and out of forrain Countreyes, which is the very thing in queſtion: further in the thirty ſixth Chapter, he ſayeth, of the King of England, *Neque Rex ibidem per ſe, aut miniſtros ſuos tallagia, Subſidia, aut alia quævis onera imponit legeis ſuis, aut leges eorum mutat, vel novas condit, ſine conceſſione vel aſſenſu totius regni ſui in Parliamento.* So he maketh theſe two powers of making Law, and impoſing to be concomitant in the ſame hand, and that the one of them is not without the other; He giveth the ſame reaſon for this, as we doe now, but in other words, becauſe (as he ſaith) in England it is *principatus mixtus, & politicus*, the King hath his Soveraigne power in Parliament, aſſiſted and ſtrengthened with the conſent of the whole kingdome: and therefore theſe powers are to be exerciſed by him only in Parliament. In other Countreyes they admit the ground of the Civil Law, *quod principi placuerit, legis habet vigorem*; Becauſe they have an abſolute power to make Law, they have alſo a power to impoſe, which hath the force of a Law in transferring property. *Philip Comynes*, that lived at that time, in his fourth book the firſt chapter, the fifth booke, the eighth chapter, taketh notice of this policie of England, and commends it above all other States, as ſetled in moſt ſecurity: And further to our purpoſe layeth this ground, That a King cannot take one penny from his Subjects without their conſent, but it is violence. And you may there note the miſchiefes that grew to the kingdome of France, by the voluntary impoſitions firſt brought in by *Charles* the ſeventh, and ever ſince continued, and encreaſed to the utter impoveriſhment of the Common people, & the loſſe of their free Councell of three eſtates: And if this power of impoſing were quietly ſetled in our Kings, conſidering what is the greateſt uſe they make of aſſembling of Parliaments,

Forteſcue de laud. Leg. Ang. cap. 36.

Ph. Com. l. 4 cap. 1. l. 5. ca. 8.

liaments, which is the ſupply of money, I doe not ſee any likelihood to hope for often meetings in that kind; becauſe they would provide themſelves by that other meanes. And thus much for my firſt reaſon grounded upon the naturall conſtitution of the policie of our kingdome, and the publike right of our nation.

Com. Law. 2. For the point of Common Law, which is my ſecond Reaſon, it hath been well debated, and nothing left unſpoken that can be ſayd in it; and therefore I will decline to ſpeak of that, which other men have well diſcuſſed, and the rather, for that there is nothing in our Law-book directly, and in point of this matter; neither is the word *(impoſition)* Dier. 1. E. 165. found in them, untill the caſe in my L. *Dier*, 1. *Eliz.* 165: for we ſhall finde this buſineſſe of an higher ſtrain, and alwayes handled elſewhere, as afterwards ſhall appeare: yet I will offer ſome anſwers to ſuch objections, as have been made on the contrary in point of Common Law, and have not been much ſtood upon by others to be anſwered.

The objections that have been made are theſe; that from the firſt Book of the Law, to the laſt, no man ever read any thing againſt the Kings power of impoſing; No judgement was ever given againſt it, in any of the Kings Courts at Weſtminſter: Other points of prerogative as high as this, diſputed and debated, his exceſſe in them limited, as in the 42. Aſs. p. 5. book of 42. *Aſs. pl.* 5. where the Judges took away a Commiſſion from one, that had power given by it to him under the great Seale, to take ones perſon, and to ſeiſe his goods 1. & 2. E. Dier. 175. before he was indicted. So Maſter *Scrogs* caſe, 1. *&* 2. *El. Dier.* 175. the power of the King in making a Commiſſion to determine a queſtion of right, depending between two parties notably debated, and ruled againſt the King, that hee could not grant it.

To this I anſwer, that cauſes of this nature (of which the queſtion now handled is) have ever been taken to be of that extraordinary conſequence, in point of the Common right of the whole kingdome, that the State would never truſt any of the Courts of ordinary juſtice with the deciding of them; but aſſumed the cogniſance of them into the high Court of Parliament,

Parliament, as the fitteſt place to decide matters, ſo much concerning the whole body of the kingdome, As it appeares, that *Ed.* 1. had granted a Charter to the men of great *Yarmouth*, that all the ſhips of Merchants, comming to the port of *Yarmouth*, ſhould land their goods at their haven, and not at any other haven at that port, as at *Garneſton*, and little *Yarmouth*, which were members of that port This was very inconvenient for the Merchants, and a great hurt to traffique, and therefore the Charter was queſtioned in the time of *Ed.* 2. and adjudged good by the Counſell: but the parties not contented with this judgement, in the ſecond yeer of King *E.* 3. by an order in Parliament made upon a petition there exhibeted againſt this grant, brought a *Scire facias* out of the Chancery returnable in the kings bench, to queſtion againe the lawfullneſſe of the Patent, and in that ſuit, the cauſe was notably Debated, and thoſe reaſons much inſiſted upon that have been enforced in this caſe; As that of the Kings power in the cuſtodie of the ports: But the matter ſo depending in the ordinary Court of juſtice, a Writ came out of the Parliament, and did adjourne it thither againe, where it gave occaſion of a good Law to be made, to prevent the like grants, and to make them voyd notwithſtanding any judgement given upon them, and to make ſuch judgements alſo void. The Statute is, 5. *E.* 3. *c.* 1. And in the Parliament rolles, 2. *H.* 4. *num.* 109. we finde a notable record, which gives warrant for the proceeding in Parliament, in this manner as hath been in this Caſe, notwithſtanding the judgement in the Exchequer, and declares to the Kingdome, that notwithſtanding the great wonder made by ſome men, nothing hath been done in this buſineſſe by thoſe that ſerve in the Parliament, but in imitation of their worthy predeceſſors in the very like caſe. In the ſecond yeere of *H.* 4. the Commons ſhew that in the time of *R.* 2. by the meanes of *John Waltham*, Biſhop of *Saliſbury*, Treaſurer of England, wrongfully without authority of Parliament, and by reaſon of a judgement given in the Exchequer, 16. & 17. *R.* 2. by the Barons there againſt certaine Merchants of *Briſtow*, and other places, paſſage had been

2. Ed. 3. 7.

9. E. 3. c. 1. everyal en and denizen may carry his Merchandiſe where it pleaſed him, notwithſtanding any Charter granted or judgments thereupon.

16. & 17. Re. 2.

been taken for wines, otherwise than in ancient times had been, and therefore they prayed, they might pay their prise wines, in the manner they had used to pay, notwithstanding any judgement given in the Exchequer, or other ordinance made by the said Treasurer, contrary to the ancient usage; which petition the King granted, and the judgement thereupon became voyde, and the prisage wine hath been paid contrary to the judgement ever since.

1. El. Dier 165. In 1. *El. Dier.* 165. upon the complaint, made by the Merchants, of the impositions set upon cloth by Queene *Mary* by her absolute power, without assent of Parliament; the cause was thought too weighty to bee decided in any one Court; but (as it appeareth in the book) it was referred to all the Judges of *England*, who divers times had conference about it. So it may well be, there is nothing against it in our yeere books, for there is nothing of it.

Another objection was this, which was made in the last argument, *viz.* That Custome is originally due by the common Law of *England*, It can then have no other ground or cause; but meerly by the Kings royall prerogative, as a right and duty originally belonging to his Crowne; which if it be, it must necessarily follow he may impose, for that is but the exercising of that right. To prove this was alledged
39 E. 3. 13. the case 39. *E.* 3. 13. by which case it appeareth, that King *John* had a custome of eight pence on a tonn of wine in the part of South-hampton, but the book doth not tell you that the King had it by prerogative, and he might have it aswell otherwise: as by prescription, or convention, which shall rather be intended, by reason of the certainty of the summe paied; for if it were by prerogative, he might take sometimes more, sometimes lesse at his will, the right being indefinite, and the quantity limitted onely by his owne Discretion. A common person may have such a custome certaine,
18. El. Dier 352. as, 18. *El. Dier* 352. the Maior of *London* hath the twentieth part of salt brought into the City by Aliens, which is a great imposition, but is good by prescription originally and hath received greater strength since, by acts of Parliament made, for the confirmation of the liberties and

customes

customes of the City of *London*. So it appeareth, that *Iohn* of *Britaine* had Custome of the ships that arrived at his port of little *Tarmouth*, worth twenty pounds *per an.* And these instances doe inferre, that a Custome may bee otherwise then by prerogative, and therefore it is no good argument to conclude, the King had such a custome, Therefore he had it by prerogative. Dier 43.

The booke in 30. *H.* 8. *Dier* 43. was much pressed on this point, which sayeth that custome belonged to the King at Common Law, and doth instance in woolls, woolfells, and leather begun at the Common Law, but abridged by the Satute of 14. *E.* 3. *ca*, 21. *stat*, 1. but this appeareth to be a great errour, and mistaking in the booke; for we doe finde that that custome of woolls, woolfells, and Leather was begun by a grant in Parliament, as appeareth in statute 15. *E.* 1 *ca.* 7. the words be Granted to us by the Commonalty aforesaid, and the last mention before was that the King had granted to the Bishops, Earles, Barons, and all the Commonalty of land, &c. *Novem.* 3. *Ed.* 1. the King recited in his letters patents, That *Prelati magnates actora Communitas mercatorum Regni*, granted this new custome. And so the ground and motive of that opinion being false, all grounded upon that must needs be erroneous. 30. Hen. 8. Dier 43. 14. Ed. 3. c. 21. *statu.*

It was objected that the King holdeth at this day the encrease of foure pence in the pound, over due custome, payd by Merchants Aliens according to the purport of the *Charta mercatoria* 31. *E.* 1. by meere right of prerogative at the Common Law; for by that grant of the Merchants he cannot hold it, they being no body politick at the time of the grant; and therefore the grant is meerely voyd to binde in succession, And yet the Merchants Aliens doe pay it at this day. Rot. char. 31. E. 1. *m.* 44. in Turri

It is agreed, that by the Common-law a contract with a number not incorporate, bindeth not succession; but we must take notice, that they, by whom that grant was made, of the augmentation of Custome, by three pence in the pound, and other encreases, 31. *E.* 1. were

Merchants aliens, who by the law of Merchants, and Nations may contract to binde their ſucceſſours in matters of traffique: for their contracts are not ruled by the Common law of the Land, but by the law of Nations, *& per legem Mercatoriam*, as the book caſe is, 13. *Ed.* 4. 10. and there was a good conſideration given them by the King for this encreaſe of cuſtome: as diſcharge of priſe Wines for two ſhillings the Tonn, and other immunities, which all Merchants aliens hold and enjoy at this day, by force of that contract made 31. *E.* 1. For a ſtranger payeth now but two ſhillings the Tonn for priſage, whereas it ſtandeth an Engliſh man in much more: ſo as the rule of commutative juſtice maketh the contract availeable to the King againſt the Merchants, becauſe he parteth with part of his priſage to the Merchant, and maketh it availeable to the Merchant againſt the King, becauſe he giveth him encreaſe of cuſtome above that is due by law. But the ſtatute of 27. *E.* 3. *cap.* 26. heretofore cited, doth make this point cleare without ſcruple, which confirmeth the Charter of 31. *E.* 1. entirely, and by that the encreaſe of cuſtome by three-pence in the pound, which is by name mentioned in the ſtature, is now due by act of Parliament.

27. *E.* 3. 26

If you will have the King hold this encreaſe of cuſtome by Prerogative, you goe directly againſt his meaning; for it appeareth by that which preſently followed this grant, that the King took this encreaſe of cuſtome by way of contract only, and not by Prerogative; for the ſame yeare following he directeth his writs to the officers of his ports, reciting the contract made with the Aliens by *Charta Mercatoria*, adding further, that ſome Denizens were willing to pay the like cuſtome, upon the ſame immunities to them to be granted, and doth aſſigne his officers to gather it, but with this clauſe, *Si gratanter & abſque coertione ſolvere voluerint, ita quòd aliquem Mercatorem de regno, & poteſtate noſtrâ ad præſtationes & cuſtumas hujuſmodi invito ſolvendas nullatenùs diſtringatis.* Nothing can more plainly expreſſe, that the Kings intention

tion was not to demand this by way of Prerogative, but by force of the contract. If there were such a Prerogative in the Crowne as of right to have custome; how commeth it to passe, this Prerogative never yet had fruit or effect? for this I can maintaine, that the King of *England* hath not one penny custome, or imposition upon merchandizes elder than the fourth yeare of Queen *Mary*; that hee holdeth not by act of Parliament, and by the peoples grant: The eldest that he hath is that of wools, woolfells, and lether, and that is by act of Parliament, as appeareth in the Statute 25. *E.* 1. *cap.* 7. the tonnage and poundage by Parliament in the first yeare of every Kings reigne. 25. *E.* 1. *c.* 7.

The Aliens encrease of custome by Parliament 27. *E.* 3. *cap.* 26. then this Prerogative hath been much neglected, that it was never called on to be put in execution, untill now of late yeares. 27. *E.* 3. *cap.* 27.

Concerning the statutes made for restraining our Kings, from the exercise of this pretended Prerogative, which is the third matter I stand upon: Those that have maintained the Kings Prerogative in this point, have endeavoured to interpret those statutes, to extend only to restraine him from imposing upon wool, woolfells, and lether, which are staple commodities: And the reason they give for this restraint, more than for other goods, is because the King, by statute, is restrained to a custome certaine for those commodities, as the halfe mark a sack of wooll, and halfe a mark three hundred woollfels, and thirteene shillings foure pence a last of lether; and therefore great reason he should not exceed this custome in these commodities. Statutes 3.

This objection receiveth many answers: First it appeareth both by the expresse letter of divers of the Lawes made in this point by the occasion that induced the making of the Lawes, and by the execution of them, that all other wares and merchandises, aswell as those of the staple, were within the purpose and intent of those Lawes: Secondly, the reason aleadged, why there should be re-

ſtraint for the ſtaple commodities, rather than for the other, is miſtaken; for the Lords and Commons did grant to *E.* 1. by act of Parliament the cuſtome of the halfe mark for wooll, woolfels, and lether, which was matter of mere grace and liberality, and includeth no reſtraint in it, but rather a favourable extention, quite contrary to the ſenſe of the objection; according to that rule of interpretation, *Gratioſa ampliari decet, odioſa reſtringi.* And admit ſome Lawes be made expreſly to reſtraine impoſitions upon wooll, woolfels, and lether, by reaſon that the occaſion of making ſuch Lawes was the actuall impoſing upon thoſe goods at that time, ſhall we not by good conſtruction, *Secundum mentem extenſivam legis*, extend this law to other wares and merchandizes, that are within the ſame miſchiefe? If we look to the reaſon of the law, we ſhall make no doubt of it; for that is, becauſe the impoſitions were without aſſent of Parliament, not becauſe they were upon ſuch, and ſuch commodities. Beſides thoſe Lawes ſo made are *declarativa juris antiqui, non introductivæ novi.*

In the enumeration of thoſe ſtatutes, which I conceive make directly to this purpoſe, I will endeavour rather to anſwer the objections made againſt them, than to enforce the ſenſe and meaning of them, which is very plaine and open, and needs no interpretation. The firſt ſtatute enforced is, *Mag. charta cap.* 30. made in the ninth yeare of *H.* 3. by which it is enacted, that all Merchants ſhall have free egreſſe, and regreſſe, out of, and into this Realme, with their goods and merchandizes, to buy, and ſell, *ſine omnibus malis toltetis per antiquas & rectas conſuetudines*: in which words we may inferre, that both the uſe and right of impoſing are abſolutely excluded, and debarred; for *Conſuetudo*, which in this caſe is to be taken for *Uſage*, which is *onus* (not improperly for *Portorium*, a duty paid in money, as our Engliſh word Cuſtome, in one ſenſe doth ſignifie) implyeth a begining, and continuance by conſent, and will of the parties, not by power, and enforcement which cannot be a cuſtome;

and

and therefore it cannot be an impoſition; for that ariſeth merely out of the will and power of their impoſer, and is againſt the will of him, upon whoſe goods it is ſet: But take *Conſuetudo* either for *mos* or *portorium*, the epithetes with which it is qualified *antiquum*, and *rectum*, doe deſcribe it to bee of that nature, that it cannot be an impoſition: for *antiquum*, in legall conſtruction, is that which is time out of minde, that is not an impoſition: for then, by continuance of time, it ſhould grow aright by preſcription, and were juſtifiable: *Rectum* implyeth a limitted right, which inferreth, there may be a wrong and exceeding of that right, which is not in impoſitions: for if there be a right in the King to impoſe, the quantity, time, and other circumſtances are in his diſcretion; the right is illimited: And if he ſet on never ſo great an impoſition, there is as much right in it, as if it be never ſo ſmall: the exceſſe maketh it a burthen, but not a wrong.

We may further obſerve, that in the ſtatute, *malum tolnetum*, which is evill toll, is ſet downe by way of antitheſis to *assisa* and *recta conſuetudo*; by which is inferred, that exactions upon wares and merchandizes, not qualified with theſe two properties of *antiquum* and *rectum*, are evill and unjuſt. This is made more evident by a Record in the Tower of the ſixteenth yeare of *H.* 3. which was a mandat ſent by the King to the Cuſtomers of his ports for the execution of this law made in 9. *H.* 3. whereby it is commanded, *Quod omnibus Mercatoribus in portum ſuum venientibus cum vinis, & aliis merchandizis ſcire faciat, quod ſalvo & ſecurè in terram Angliæ veniant cum vinis & merchandizis ſuis, faciendo inde rectas & debitas conſuetudines, nec ſibi timeant de malis tolnetis, quæ eis faciat Rex, vel in terrâ ſuâ fieri permittat.* By this record the word *Conſuetudo* is interpreted to be *mos*, not *portorium*, otherwiſe it ſhould have beene *ſolvendo conſuetudines*, not *faciendo*. Alſo theſe words *antiquum & rectum* in the ſtatute in this writ are *rectum & debitum*, which doth more enforce a certainty of right and duty, which

Rot. clauſ. 16. H. 3. num. 20.

which by no meanes can be intended in impoſitions.

Objections againſt this law were made in the laſt argument. Firſt, that it was made for Aliens: this is true; the words of the Law doe plainly ſhew it was made for Aliens: but if the State was ſo carefull to provide for them; ſhall we not judge that with Denizens it was ſo already? and that this ſtatute was made to extend that liberty by act of Parliament to Aliens, which Denizens had by the Common law: ſucceeding times did ſo con-
2 E. 3. c. 9. ceive of it, as appeareth by the ſtatute of 2. *E.* 3. *cap.* 9, the words are, that all Merchants, ſtrangers, and Princes may goe and come with their merchandizes in *England*, after the tenor of the great Charter, and that writs bee thereupon ſent to all the Sheriffs in *England*, and to Maiors, and Bayliffs of good townes where need ſhall require.

A ſecond objection was made in the laſt argument, out of theſe words of the ſtatute of *M. Chart.* that Merchants might freely traffique, *Niſi publicè antea prohibiti fuerint*: by which was enforced, that the King had power to reſtraine and prohibit traffique; therefore to impoſe. It is agreed, there may be a publick reſtraint of traffique, upon reſpects of the common good of the kingdome; but whether that which is called *publica prohibitio* in the ſtatute, be intended by the King alone, or by act of Parliament, is a queſtion: for ſuch reſtraints have ſtill beene by Parliament. But admit the King may make a reſtraint of traffique in part, for ſome publick reſpect of the common wealth, he doth this in point of protection, as truſted by the Common-wealth, to doe that which is for the publick good of the kingdome; but if he uſe this truſt to make a gaine and benefit by impoſing, that is a breach of the truſt, and a ſale of government and protection. But more of this ſhall be hereafter ſpoken in the anſwering of the maine objections.

25. E. 1. c. 7. The next law is that notable ſtatute of *E.* 1. in the 28 yeare of his reigne made upon the very point in queſtion: the words are theſe; And foraſmuch as the more part of

of the Commonaltie of this Realme finde themſelves ſore grieved with the male toll of Woolls, that is, to wit, a toll of forty ſhillings, for every ſack of Wooll, and have petitioned to us for to releaſe the ſame; Wee at their requeſt have clearly releaſed it, and have granted for us and our heires, that wee ſhall not take ſuch things, without their common conſent and good will, ſaving to us and our heires the cuſtomes of Woolls, Skins, and Leather granted before by the Commonalty aforeſaid. Againſt the application of this Law to the queſtion now in hand, many objections were made, ſome out of matter precedent to the Law, ſome out of the Law it ſelfe, ſome out of matter ſubſequent and following after the Law: For matter precedent; It was objected out of *Tho. Walſingham* an Hiſtoriograper of good credit, that Writ of that time when the Satute was made, That in the petition of grievances given to King *E.*1. by the people in the 25. yeere of his raigne, upon which petition the ſtatute was made, that they found themſelves not grieved in point of right, but in point of exceſſe; the words are, *Communitas ſentit ſe gravatam, de vectigali lanarum quod nimis eſt oneroſum*, viz. *de quolibet ſacco* 40. *s. & de lanâ fractâ ſeptem marcas*; So they expreſſe the cauſe of their griefe, that it was too heavie; which is to bee applyed to the point of exceſſe, not of right.

Tho. Walſingham in *E.*1. fo. 71. 72. 73. edit. per *W. Camden* impreſ. *Francofurti.* 1603.

To this I anſwer, that if the words had been (*quia eſt nimis oneroſum*) this conſtruction might have been made out of them; becauſe the word (*quia*) had induced a declaration of the cauſe of that which was formerly affirmed: but the words are (*quod nimis oneroſum*) which doth onely poſitively affirme that the impoſition, *de facto*, was intolerable for the greatneſſe of it, which doth not therefore admit that it is tolerable, in reſpect of the right the King had to impoſe. But this is made cleare by the generall word precedent in the preamble of the petition, which doth evidently inferre, they grounded their complaint upon point of right, not upon point of of exceſſe; the words are theſe, *Tota terra communitas ſentit ſe valdè gravatam, quia non tractantur ſecundum leges, & conſuetu-*

dines terræ, secundum quas tractari antecessores sui solebant habere, sed voluntarie excludantur. After which preamble, among the particulars, this of forty shillings upon a sack of Wooll is ranked, but with a dependencie of that expressed in the preamble, for the point of right. But seeing wee light upon History, which though it bee of small authority in a Law argument; yet being the History of our owne Realme, hath fit and proper use in the common counsell of the Realme, I will pursue it a little further. Out of *Matth. Westm.* a Writer, that lived much nearer the time of the Law made, then *Thomas Walsingham*; he saith, That the Commons by their petitions required, *Ne Rex de cætero tallagia usurparet, & voluntarias super his inductas exactiones de cætero quasi in irritum revocaret*; by which it appeareth, that the point of the complaint was, that the exactions layd on them were voluntary, that is, at the Kings will, without assent of Parliament. Out of the Law it selfe, it hath much been pressed, as first the Commons made petition to the King, whereupon they inferre out of the nature of the word (petition) that their proceeding was by way of grievance, for the excesse and inconvenience, as a matter of grace, not in course of justice for the wrong.

Matth. Westm. fo. 450. Edit. per H. Savile mil. Francofurti 1601.

To this I answer, that considering the qualitie of the parties to this action, it being betweene the King and the subject; duty and good manners doth induce gentlenesse and humilitie of termes, without blemish, or diminution of the force of right. It is according to the demeanor of *Iob*, cap. 9. v. 15. *Though I were just, yet would I not answer, but I would make supplication to my judge.* But in our formes of Law, be the right of the subject never so cleare, manifest, and acknowledged by all; yet if his own be detained from him by the King, he hath no other writ or action to recover, but a meere petition, *Supplicat celsitudini, &c.* So as if the word petition to the King inferre defect of right in the petitioner; there can be no case where the King can doe the subject wrong.

Iob. 9. 15.

A second objection out of the body of the Law is, that the

the King doth releaſe that impoſition of forty ſhillings, which implyeth a right ſetled in him. But to this I anſwer, that it is no neceſſarie inference, that whereſoever a releaſe of right is: for it is uſed for claime only, or where poſſeſſion was, though wrongfull, and that *in majorem ſecuritatem, quia abundans cautela non nocet*; But in this caſe, a releaſe was very expedient, and for ſome reſpect neceſſary, to extinguiſh a right the King had in this impoſition againſt the Marchants themſelves: For this impoſition, though it were not ſet on by aſſent of Parliament, yet was it not ſet on by the Kings abſolute power; but was granted to him by the Merchants themſelves who were to bee charged with it: ſo the grievance was the violation of the right of the people, in ſetting it on without their aſſent in Parliament, not the dammage that grew by it; for that did only touch the Merchants, who could not juſtly complaine thereof, becauſe it was their own act and grant. This appeareth by two notable records, the one 22. *E.* 1. A writ to the Treaſurer and Barons of the Exchequer in Ireland, to diſcharge the Merchants there, of impoſitions on Woolls; in which the King reciteth, *Licet in ſubſidium Guerræ Regis pro recuperandâ terrâ Vaſconiâ, mercatores gratanter conceſſerunt per biennium vel triennium, ſi tantum duraverit Guerra, de ſacco lanæ, &c.* The other record is the Writ of publication that in 26. *E.* 1. went out after the Statute of 25. in which Writ the King reciteth thus, *Cum nos ad inſtantiam Communitatis Regni noſtri remiſerimus cuſtumam 40. s. nobis nuper in ſubſidium Guerræ noſtræ contra Regem Franciæ conceſſum, &c.* A third objection made out of the body of the Statute, by thoſe which have argued on the contrary part was upon theſe words, that the King would take (no ſuch things) without common conſent: by which words they conceived the intention of the Law, was limitted preciſely to impoſitions ſet upon wooll, and not on other commodities, which are not ſuch things, but other: And for this they alledge this reaſon, That it was not probable when the complaint was only for

22. *E.* 1. Origen. in Scac. Rem. Theſ.

In 26. *E.* 1. mem. Sca. Rem. Theſ.

an impoſition on Wooll, that the King would give a remedy for other things not ſpoken of, for which there was no cauſe of complaint.

To this a full anſwer is given many wayes: firſt out of the (*Saving*) in the Act, which extends to other things than to Wooll, as to Wooll-fells and Leather; therefore the purview of the act by theſe words (ſuch things) extendeth to more than the Wooll; for there needs no *Saving*, but for that which is contained in the purview. Secondly, the reaſon alledged, that no more by likelihood ſhould bee remedied, but for Wooll; becauſe only that was complained of, is falſe: For the complaint of the Commons was not only for this impoſition on Wooll; but divers other burthens and grievances of the like nature. And this will appeare if wee compare all the parts of the Law the one with the other: for this Law is in the forme of a Charter written in French, and beginneth, *Edward by the grace of God, &c.* And is an entire grant, and inſtrument without fractions, ſections, and Chapters, as it is now printed, and containeth in it, next before this laſt clauſe concerning the impoſitions on Woolls, which in the printed Book is *Cap.* 6. That the King, for no buſineſſe from thenceforth, will take no manner of aydes, miſes, nor priſes, but by common aſſent. This word (*miſes*) in French ſignifieth properly impoſitions, derived of the word *mitto*, in Latine (to put) ſo the word (ſuch things) is a concluſion to all the premiſes, and hath relation not only to that which is made *Cap.* 7. by the Printer, and concerneth the male toll of Woolls; but to that precedent which is (all other aydes) impoſitions, and takings.

Mem. Stac. in 26. E. 1. Rem. Theſ.

The Writ of publication of this Statute ſent out to all parts in 26. *E.* 1. maketh plaine this conſtruction, the words of it are, *Concedentes quod cuſtumam illam vel aliam, ſine voluntate, vel communi aſſenſu non capiamus:* Theſe words (*vel aliam*) are indefinite, and extend to any other whatſoever, beſides that of Woolls. The Writ doth further diſcharge Merchants for the Commodities of Wooll-

Wooll-fells, and Leather, which are not complained of by name in the Statute; and therefore the Law was intended to other impoſitions, aſwell as to thoſe upon Woolls.

The objection made out of matter ſubſequent to the Statute was this, that notwithſtanding this Law of 25. *E.* 1. impoſitions that before the ſtatute had bin ſet on other Merchandize than Woolls, were ſtill anſwered after the Statute; and for inſtance of this was alledged, that whereas 16. *E.* 1. an impoſition of 4. *s.* the Tonn was ſet upon Wines brought into the Kingdome, an accompt was made of this in th' exchequer in 26. *E.* 1. as by the records there appeareth; by which it ſeemeth that the Law of 25. *E.* 1. was not taken to extend to wines, and ſuch other Commodities, other than Woolls named in the Statute. It is true, ſuch an impoſition was ſet on by *E.* 1. in the ſixteenth yeere of his raign, and an accompt made for it 25. and 26. But it appeareth by the record of the accompt, that it was made for the time ended before the Statute made: As from the eighteenth of *May*, 16 *E.* 1. to 23 *Jul.* 22. *E.* 1. But there is no record, that ever any accompt was made for any money received for that impoſition, for the time after the Statute made; neither was it very willingly anſwered before; for it appeareth by the record, that it was ten yeere after the ſetting of it.

16. *E* 1. *Orig. R. Theſ.*

25. & 26. *E.* 1. *de compt. T. Mich. R. Theſ.*

The third Satute alledged on the behalfe of the Subject is that 34. *E.* 1. *ca.* 1. the words are theſe, No tallage or aide ſhall be taken or levied by us, or our heires in our Realme, without the good will and aſſent of our Arch-biſhops, Biſhops, Earles, Barons, Knights, burgeſſes, and other freemen of the land. Againſt this was objected, that this Statute was intended only upon the taxes & impoſitions of things; The word *Auxilium* makes it cleare, that it is to be intended further then of things within the realme; for *tallagium* is commonly intended of Domeſticall taxes, but *auxilium* is the moſt uſuall terme for impoſitions upon goods imported and expor-

34. *E.* 1. *ca.* 1.

ted, as by the acts of Parliament by which ſuch impoſitions are given to the King, in which they are called moſt commonly by the name of Aydes, as proceeding of good will and benevolence.

5. E. 2. ca. 14 Rot. Ordin.

The fourth Satute alledged on this part is that of 5. *E. 2. ca.* 14. juſt in point of the matter in queſtion; and therefore I will ſet it downe as I finde it *Verbatim* in the record in the tower, *Enſement novelles cuſtomes ſont levies, & ancients enhaunces come ſur lewes drapes, vine, aver du pcis, & aut choſes purquoy les Merchants veynont pluis vilement, & meynes de bien, menynont en la terre, & les Merchants eſtrangers de murront pluis langment que ils ſoloyent faier, pur le quel demeure les choſes ſont le pluis enhaunces que ils ne Soloyent eſtre, al dammage de roy, & de ſon people. Nous ardonomus que touts manners de male tolls levies puies de Coronement de Roy Ed. faier de Roy Henry ſoyent entirement ouſtes, & de tout eſtreints pur touts jours, nient contriſteant le Chartre que le dict Roy Ed. fiſt as Merchants aliens, pur ceo que il fuit fait contra le grand Char. & encountre le Franchiſe de la City de Londres, & ſans aſſent de Baronage, &c. Savant neque dont al Roy le cuſtome de leynes, peulx, & de quirs, &c, ſi aver les doet.*

By this Law is recited, that by the leving of new couſtomes, and by the raiſing of old, traffique was deſtroyed, and all things made deare; And therefore all new impoſitions and cuſtomes were diſcharged *Chartâ mercatoriâ*, by which cuſtome was encreaſed on aliens, was taken away, and the reaſon alledged; Becauſe it was *ſans aſſent de Baronage*, and againſt the great Charter. And this is further which this clauſe, Saving to the King his cuſtome of wooll, woll-fells and Lether, *Si aver les doet.* Great warres have been raiſed againſt the credit of this Law in the Parliament houſe, and three things have been eſpecially objected againſt it; Firſt, that it is no Law, for it was enforced upon the King, by ſome of the nobility that were too ſtrong for him, the Realme being then in tumult and mutiny about the

quarrell

quarrell of *Peirce of Gaveston*, so never had the Kings free consent; but he gave way unto it for feare of greater mischiefe: Secondly, that in it selfe it is unjust, as in taking away the custome granted to the King by *Charta mercatoria* 31. *E.* 1. and in making doubt whether the King should have the custome of wools, &c. by those words, *Saving it to him, Si amer les dotz.*

The third objection is, that if it were a Law, it is repealed.

To these I give particular answers.

To the first: that this statute was made both at the instance of the King, and people, with a purpose and intention on all parts to settle things in a stay and order, both in the Kings house, and Common-wealth: the King and his nobles standing in good termes, when this businesse was taken in hand; and it was begun and ended with great solemnity and ceremony: for the King in the third yeare of his reigne gave Commission under his great Seale to 32. Lords spirituall and temporall; of which there were eleven Bishops, eight Earles, and thirteene Barons; they being as Committees of the higher House to devise ordinances, for the good government of of his house and his Realme. In which Commision he doth for the honour of God, the good of him, and of his Realme, of his free will graunt to the Prelates, Earles, and Barons, and others elected by the whole Kingdome, full power to ordaine the State of his house and Realme by such ordinances, as by them should bee made, to the honour of God, the honour and profit of holy Church, the honour of himselfe, the profit of him and his people, according to right and reason, and the oath hee made at his Coronation. Com. 16. M. 1. 3. E. 2. Rot. ordin. 5. E. 2.

These joyning with others of discreet Commons in Parliament, and taking every of them a solemn oath for their sincere demeanor in the businesse, did make this and other ordinances, which were so well liked of by the King, that after they were made, hee took an oath to observe them,

them, and cauſed them to be publiſhed in *Pauls* Churchyard by the Biſhop of *Salisbury*, by denouncing excommunication, againſt all that ſhould wilfully infringe them: And by his Letters Patents dated 5. *Oct.* 5. *regni ſui*, did ſend them through the Realme to be publiſhed, and from thenceforth to be obſerved, thereby ſignifying his great liking and approbation of them; after which they had the force and power of Lawes given unto them in the Parliament, in the fifth yeere of his raign.

Publ. 3. Kal. Oct. 5. E. 2. Rot ordin. Pat. 5. Oct. 5. E. 2. Rot. ordin.

The ſecond obiection, which is the injuſtneſſe of the law, inſtanced in two points; the taking away of *Charta mercatoria*, and the doubting of the Kings right to the cuſtome of wolls, woll-fells and Lether, &c. To the firſt of theſe, I deny it to be unjuſt, but to be according to the law of *England*, and liberty of the Kingdome: for that Charter did containe in it divers grants of things, which were not in the power of the King to grant, without aſſent of Parliament; as the triall *per medietatem linguæ*, and other things tending to the alteration of the Law, and burdening of the people; and therefore that Charter never had his undoubted and ſetled force, until it was confirmed by act of Parliament, but lay aſleep almoſt twenty yeers together, without being put in execution, between 5. *E.* 2. and 27. *E.* 3. when it was confirmed, for the doubt that is ſuppoſed to be made in the ſtatute of the Kings right to the cuſtome of wooll, wooll-fells, and Lether I take it there is no ſuch doubt made: For the words (Saving the kings right to the cuſtome of woolls *ſi aver les doet*) have this conſtruction, that is, at ſuch times as hee ought to have it: ſo the word (*ſi*) hath the ſignification of (*quando*) for it had been a folly to have made a Saving of that, of the right whereof they had doubted, neither is it likely but that they would have taken it away, if it had not been lawfull; but there was no colour to doubt of the right of it, for it was given by act of Parliament, and ever continued in force without challenge, or exception to the lawfullneſſe of it.

The

The third objection is, That this Statute is repealed: To this I plead, *Nullum vale recordum.* If it be repealed it must be by Act of Parliament, for *unumquodq; dissolvitur iisdem modis quibus est colligatum:* I and others have searched the Records of the Realme, and endeavoured by all means to informe our selves of the truth herein, and we can finde no Act of Parliament of repeale: The truth is, some Kings finding these Lawes not to sort to their wills and humours, have endevoured to suppresse them, but they didnever yet obtaine a repeale of them by Act of Parliament.

But it is further urged, That although there were no formall repeale of the Law, yet it was never put in execution as a Law, but even presently upon the making was rejected, and use and practise went quite against it: And for instance hereof, a Record was vouched that *E.* 2. held himselfe so little bound by it, as that in the 11 yeare of his raigne he set an imposition without assent of Parliament upon Wooll, Wooll-fels, Leather, Wines, Cloth, *averde pois*, and divers other kinde of Merchandizes. To this I answer, that if it were true, that a distinct and impotent King, as he was, did contrary to the Law; doth this make the Law void and no Law: But if wee looke into the whole Record, and skanne this action of *E.* 2. from the beginning of it, unto the end, we shall finde it a very good instance to prove the practise and execution both of this Law of 5. *E.* 2. and of that in 25. *E.* 1. for it is true that *E.* 2. in the 11 yeare of his raigne did borrow of the Merchants a certaine summe of money above the due custome of Wooll, Wooll-fels, Wine, *averdepois*. Leather, and such other goods imported and exported; But it appeareth by the Record, hee tooke it but for one yeare; hee tooke it by the advise and counsell of the Merchants: and he took it *per viam mutui*. as a loane. The direction of the Writ is, *Collectoribus mutui nobis per mercatores alienigenas & indigenas de certis rebus & Merchandisis usque ad certum tempus faciendi.* This was done in good tearmes, he did not claime it as his right; but did borrow it, which I doe thinke is a good evidence against his right: But what be-

Rot. claus. 11. E. 2.

came of this? the State would not abide it, for all theſe faire ſhewes. And therefore afterwards the King ſendeth out other Writs by which he diſchargeth all merchandizes of this loan, ſaving onely Wooll, Wooll-fels, and Leather, and for the loane taken upon thoſe commodities, it was limitted to continue but untill Michaelmas after, and good ſecurity was given to the Merchants by the Cuſtomers to pay themſelves by way of defalcation out of the Cuſtomes which ſhould be due after Michaelmas, thoſe ſummes which were ſo borrowed of them. The words of the Record are worth the obſerving, *Cum pro expeditione guerræ Scotiæ, & aliis arduis & urgentibus neceſſitatibus nobis multipliciter incumbentibus, pro quarum exoneratione quaſi infinitam pecuniam reſundere oportebit, pecunia plurimum indigeamus in preſenti, & nuper pro eo quod exitus regni & terrarum noſtrarum ſimul cum pecunia nobis in ſubventione præmiſſorum tam per Clerum quam Communitatem regni noſtri conceſſa ad ſumptus prædictos cum feſtinatione qua expediret faciendos, non ſufficiunt, exquirentes vias & modos quibus poſſemus pecuniam habere commodius & decentius pro præmiſſis de conſilio & adviſamento quorundam mercatorum tam alienigenarum quam indigenarum viam invenimus infraſcript. viz.*

Rot. ſinium 11. E. 2.

And ſo ſetteth down the manner of the loan, and the ſecurity for the payment of it: This (I take it) was neither an impoſition, nor a wrong in any reſpect. Alſo by the firſt Record it appeareth, that the loane ſet on Wines, *averdepois*, and ſuch other commodities, beſides Wooll, Wooll-fels and Leather, were preſently diſcharged by E. 2. which ſheweth they were taken to be within the intent of the Statute of 25 E. 1.

The fift Statute alledged on the behalfe of the ſubject is that 14 E. 3. Stat. 1. c. 21. by which the Commons pray the King to take no more then th'old cuſtome of the halfe marke. The King prayeth aide of the Commons for a time above the cuſtome upon his neceſſity of warres. And the concluſion is that by that Act the King doth grant that after the feaſt of Pentecoſt twelve moneths following, he will take no more of Wools, Wooll-fels & Leather,

14 E. 3 Stat. 1. ca. 21.

but

but the old Custome, and doth promise to charge, set, or assesse upon the Custome but in manner as aforesaid.

The sixth Statute is 14. *E.* 3. *Stat.* 2. *ca.* 1. The King doth grant by way of Charter to the Prelates, Earles, Barons, Commons, Citizens, Burgesses and Merchants, that they be not from thenceforth charged nor grieved to make any aide or sustaine charge, if it be not by the common consent of the Prelates, Earles, Barons, and other great men, and Commons of the Realme, and that in Parliament. 14. E. 3. *stat.* 2. *ca.* 1.

These two Statutes grew upon occasion of an Imposition set on Wooll by the King without assent of Parliament: Little hath beene objected against them, but onely to the first, that it was obtained of grace, and not upon instance of right, which they gather out of the words of the Law, which are, The Commons pray the King that he would stablish, that from henceforth no more but the old custome be taken. The like reason may be made against the King out of the same words in the same Law: for the King in the same Act prayeth the Commons to give him an Imposition upon Wools for a time above the old Custome: but the Record of the Petitions exhibited in Parliament, upon which these two Lawes are made, cleareth the objection.

The first was delivered by the Lords in this forme, *Les grands volunt*, that the maletoll set on Wools newly, be altogether abated, and that the old custome beheld, and that they may have this in point of Charter, and by inrollment in Parliament. This word (*volunt*) had beene too high for a suit of grace, and therefore must be intended of right. The Commons Petition in forme, is somewhat humble, but in effect and purpose is rough and sterne: the words are these, The Commons pray that the maletoll of Wools be taken as it was used in ancient time, which is now enhaunced without the assent of the Commons, and (*grandes*) as we conceive, and that if it be otherwise demanded, that every one of the Commons may arrest them without being challenged. According to these Petitions, *Rot. parl.* 13. *E.* 3. *num.* 5. *Rot. parl.* 13. *E.* 3. *nu.* 13.

the first of these two Lawes, is by inrolment in Parliament: the second is in forme of a Charter: the first doth expresse some special commodities: the second doth reach generally at all.

14. E. 3. stat. 2. ca. 2. The seventh Law directly touching this point, is that 14. E. 3. *stat.* 2. *ca.* 2. The King doth grant according to the great Charter, that all Merchants denizons, and forrainers may without let safely come into the Realme of England with their goods and Merchandizes, and safely tarry, and safely returne, paying the Subsidies, customes and other profits reasonably due. Upon the words of this Law, was great advantage taken, in this, that besides custome and subsidy, which comprehend all the certaine & ordinary duties, the King hath upon the & wares & goods of Merchants, there are other profits spoken of to be due: these they affirme cannot be understood but of Impositions by the King without assent of Parliament.

To this I answer; if they were not duties due to the King besides, Custome and Subsidie, which might satisfie the intention of these words, this objection might have had some colour in it; but it is plaine that besides these two, there are other profits due to the King upon Merchants goods, as Scavage, Tonage, and the like.

Rot. parl. 50. E 3. nu. 163. And you shall finde a Petition in Parliament, 50. *E.* 3. against the raising of these above the old rate.

25. E. 3. stat. 2. ca. 5. The eight Law is *E.* 3. *stat.* 2. *ca.* 5. whereby it is enacted that every Merchant may freely buy and sell, and passe the sea with their Merchandizes of Wooll and all other things, paying the Custome of old time used, according to the Statute made the last Parliament in Midlent, which was the *stat.* 14. *E.* 3. *stat.* 2. *cap.* 2. This Law doth expresly exclude the novelty of Impositions.

18. E. 3. stat. 1. ca. 3. The ninth Law is that 18. *E.* 3 *stat.* 1. *ca.* 3. Whereby it is enacted that the sea be open to all manner Merchants to passe with their Merchandizes where it shall please them.

27. E. 3. st. 2. ca. 2. The tenth is 27. *E.* 3. *stat.* 2. *ca.* 2. for the assurance of Merchant strangers and other, the King doth will and grant

grant for him & his heires that nothing ſhall be taken over the due Cuſtomes, nor taken of them to his uſe by colour of ſale, or in other manner againſt their wils.

The eleventh is 38. *E.* 3. *ca.* 2. that all manner Merchants aliens and denizens may buy and ſell all manner of Merchandizes, and freely carry them out of the Realm, paying the Cuſtomes and Subſidies thereof due. 38 *E.* 3. *ca.* 2.

The laſt is 22. *H.* 8. *ca.* 8. by which it was enacted that Tables ſhould be ſet up in ports, by which the certainty and very duty of every cuſtome, toll, and duty or ſumme of money to be demanded and required of wares and Merchandizes ſhall and may plainely appeare and be declared, to the intent that nothing be exacted otherwiſe then in old time hath beene uſed and accuſtomed. 22. *H.* 8. *ca.* 8.

By this late Law it appeareth that the judgement of of the whole Parliament was at that time, that nothing was due upon Wares and Merchandizes, but that which was certaine, and had beene anciently due, by which Impoſitions are excluded, whoſe qualities are novelty and incertainty, as being ſet on, as preſent occaſion moveth, and proportioned for quantity and other circumſtances, as the will of the King directeth.

Theſe are the Lawes which I conceive moſt directly tend to the reſtraining the Kings of England from the exerciſe of that irregular power of impoſing, at the firſt offered by them to be put in execution, yet not preſſed as their right, and never practiſed but upon oppoſition of the whole State, and at laſt deſerted and given over untill of late, As by that which followeth in the fourth place will appeare.

My fourth and laſt aſſertion is, that this practiſe of impoſing without aſſent of Parliament, is *contra morem Majorum*. In this I will make an hiſtoricall perluſtration of the times paſt, whereby I will diſcover and make knowne what paſſages have beene in this buſineſſe in this Kingdome, and eſpecially in the high Court of Parliament for the ſpace of 300 yeares and more laſt paſt, ſince the beginning of the raigne of *E.* 1. ſithence which time, and *Cuſtome* 4.

not before this Kingdome hath growne into the glory and reputation of foraigne traffique. And as a worthy Gentleman of the Kings learned Councell, made certaine considerations upon this queſtion, framed and ſtrengthened out of the greatneſſe of his wit and reaſon: ſo I grounding my ſelfe upon the practiſe of former times, which is the ſafeſt rule where y to ſquare the right both of King and people in this Common wealth, where their right is *jus conſuetudinarium*, a right that groweth by uſe and practiſe, I will propoſe unto you certaine obſervations out of the action and experience of former times untill the raignes of the two late Queenes; by which you may the better ground and frame your judgements in the determination of the right in this queſtion.

My firſt obſervation is in point of circumſtance, that there never was any Impoſition ſet, but in time of actuall war, and *duplicatis vexillis*: they were ſet on very rarely and ſparingly, but for a ſhort time, and that certaine and definite, and upon ſome few commodities, and that by the aſſent of the Merchants that were to beare the burthen. In our time the occaſion not ſo ſenſible, the continuance to be perpetuall, the number many hundreds, almoſt no kinde of Commodity ſpared. I will give you ſome few Inſtan- of theſe circumſtances ces out of the Records themſelves.

22. E. 1. *orig. Scacc. Rent. Theſ.* 22. E. 1. *mem. Scac. R. Theſ. T. Mich.*

The maletole of Wooll ſet on by King *E.* 1. which gave the occaſion of the Stat. 25. yeare of his raigne was given by Merchants. The Record ſaith, *Mercatores gratanter conceſſerunt in ſubſidium guerræ Regis*, It further ſheweth, it was for his neceſſity of warre, which then was great alſo.

Rot. parl. 17. *E.* 3. *nu.* 28.

For the time of *E.* 3. there need not many inſtances, for his whole raigne was almoſt an actuall warfare. As in the ſixt year of his raigne for his warre in *Scotland* and *Ireland*. In the thirteenth year of his raigne for his war in *France*, ſeverall Impoſitions were ſet on.

In the ſeventeenth yeare of *E.* 3. the Record in the Tower, mentioneth that forty ſhillings Impoſition was upon a ſacke of Wooll by the grant of Merchants, and

and it was in the time of Warre.

In the twentieth yeare of King *E.* 3. it appeareth in the Record, that the Impoſition then put upon Wools, was by the aſſent of Merchants for two yeares, for the neceſſity the King had in his paſſage over the ſea, to recover his right, and to defend the Realme. *Rot. parl.* 20. *E.* 3. *nu.* 18.

My ſecond obſervation is, never any Impoſition was ſet on by the King out of Parliament, but complaint was made of it in Parliament, and not one that ever ſtood after ſuch complaint made, but remedy was afforded for it, *Et quod Rex inconſulto fecit, conſulto revocavit*, his Soveraigne power controlled his ſubordinate. In which it is a thing very notable, that the King in no one Caſe, ever claimed, or ſo much as ever named his right or prerogative, which no doubt would have been done, if it had been thought due, but gave ſatisfaction to the complaint by one of theſe three waies, either by diſcharging them quite and making ſome good Law againſt them. Secondly, by intreating the people to hold them ſome ſhort time by their favour. Thirdly, by waving his preſent poſſeſſion, and taking that of their gift by Act of Parliament, as an aide which he had ſet on by his abſolute power as an Impoſition.

Inſtances of the firſt 25. *E.* 1. the Impoſition of Wools taken off, and a Law made againſt it, and the King undertooke for him and his ſucceſſors to doe ſo no more: 38. *E.* 3. 26. the Impoſition of three ſhillings foure pence on a ſacke of Wooll put off upon complaint, and a Law made againſt it, 38. *E.* 3. *ca.* 2. the like Statute 45. *E.* 3. *c.* 4. upon a complaint of an Impoſition on Wools made in Parliament, 45. *E.* 3. *n.* 42. *Rot. Parl.* 25. *E.* 1. *ca.* 7. *Rot. parl.* 38. *E.* 3. *n.* 26. 38. *E.* 3. *cap.* 2. 45. *E.* 3. *cap.* 4. 18. *E.* 3. *cap.* 10, 11. *R.* 18. *E.* 3. *cap.* 3. *ſt.* 1.

Inſtances of the ſecond 21. *E.* 3. *nu.* 11. a petition upon an Impoſition of 2. *s.* upon a ſacke of wooll, 2. *s.* upon a tunne of wine, and ſix pence upon *aver de pois*, all diſcharged preſently, ſaving the two ſhillings upon a ſacke of wooll, and for that intreated that it might ſtay till Eaſter following, and ſo it did, and was then taken away. 21. *E.* 3. *n.* 11. *R. Parl.*

Inſtance of the third 25. *E.* 3. *nu.* 22. the Commons made 25. *E.* 3. *n.* 22. *rot. parl.*

made petition againſt an impoſition of fourty ſhillings upon a ſacke of wooll granted to the King by the merchants, ſhewing that they ought not to be bound by their act, The King did not claime right or juſtifie, but becauſe his warres were great upon his requeſt had it granted unto him for two yeeres by Act of Parliament, and pretended no title of Prerogative, neither was it ever ſpoken of.

Orig. in Scac. 31. E. 1. R. Theſ. My third obſervation is that our Kings have acknowledged that it is not their right, *E.* 1. in his writs he ſent to the officers of his parts to levie three pence on the pound over the old cuſtome, of the Denizons as well as of the Aliens, and to ſuffer the Denizons to enjoy thoſe priviledges the Aliens did enjoy by the payment of the encreaſe of Cuſtome, doth give this direction expreſly. That they ſhould not take it of Denizons againſt their will, The words of the Record expreſſe it very fully, *Cum mercatores extranei & alienigenæ pro quibuſdam libertatibus eis per nos conceſſis & priſis noſtris quibuſcunque remiſſis, nobis de bonis & merchandiſis ſuis quibuſcunque infra regnum & poteſtatem noſtram adducend. ultra antiquas cuſtumas dare conceſſerint præſtationes & cuſtumas ſubſcriptas, viz.* and ſo ſetteth downe the increaſes, and amongſt the reſt this three pence upon the pound, and ſo proceedeth, *Ac quidam mercatores de regno noſtro & poteſtate noſtra, ut ipſis dictis libertatibus & immunitatibus uti & gaudere, & quod de priſis noſtris quieti eſſe poſſint, præſtationes & cuſtumas hujuſmodi de bonis & merchandiſis ſuis nobis ſolvere velint, ut accepimus, aſſignavimus vos, &c. ad cuſtumas & præſtationes prædictas de mercatoribus de regno & poteſtate noſtra colligend. qui eas gratanter & ſine coercione ſolvere voluerint. Ita tamen quod aliquem mercatorem de dicto regno & poteſtate noſtra ad præſtationes & cuſtumas hujuſmodi nobis invito ſolvend. nullatenus diſtringatis.* Surely if *E.* 1. had claimed the prerogative of impoſing, hee would never have given theſe cautions in the requiring of that which hee had taken to be his due, as that they ſhould not exact it of any of his ſubjects that were not willing to pay it, nor trouble, nor diſtraine them for it.

In

In the twelfth yeere of *E.3.* wee finde the Record of certaine letters written from the King being then at *Barwick* in the Scottish warres, unto the Archbishop of *Canterburie*, in which letters the King seemeth to have a great confidence in the devotion of the Archbishop, and therefore earnestly intreateth him, to further his enterprises with his prayers to God, and then addeth further. *Ad hoc pater, cum populus regni nostri variis oneribus, tallagiis & impositionibus hactenus pragravetur (quod dolenter referimus) sed inevitabili necessitate compulsi de eisdem oneribus ipsum adhuc relevare non valemus, dictum populum ut tantam necessitatem nostram humiliter & benigne patiatur & caritative sustineat, & priorem (quam penes nos concepit de cetero instanter in orationibus & eleemosynis suis, oneribus prædictis, quæ non ex malitia vel presumptione voluntaria ipsum gravant, non obstantibus) exhibeant caritatem, indulgentiam muneribus & aliis modis, quibus secundum Deum vidobtis piis exhortationibus inducatis, & nos penes eandem excusetis, speramus namque per Dei gratiam, cujus manus cunctis indigentibus sola sufficiens, & largiflua comprobatur, beneficiis compensatius dictum populum visitare & consolari pro loco & tempore opportunis.* *Rot. Alem. 12. E.3. dorso. 22. in turr.*

The principall thing I note out of this Record upon the very point of this my third observation, is, that the King intending to excuse himselfe of the burthens by him laid on the people, and to avoid the blemish of wrong and injustice in laying thereon, saith they were not *onera ex presumptione voluntaria*, that is, burthens that he presumed to lay on at his owne will, whereby hee condemneth impositions without assent of Parliament, which are (*onera ex voluntate Regis*) to proceed of presumption, which doth clearly exclude claime of right, and disproveth the lawfulnesse of the act. But there are divers other notable passages in the Record worthy our marking. As out of the word (*pragravantur*) used by the King, wee may gather hee did accompt these Impositions a grievous burden to his people, which sheweth his owne pity of them. He saith further, *Dolenter referimus*, shewing his griefe

griefe and remorse at it, *& inevitabili necessitate compulsi*, hee did it constrained by unavoidable necessity, shewing hee was forced to it against his will, by that which violateth and breaketh all law, which inferreth, hee would not maintaine his action by law; *Allout relevare non valemus*; this insinuates, hee would ease them in good time; *cartarum eam exhiberent*, they should afford him charity in the bearing of them, as if so bee in point of justice or right they need not, *Pones eumdem excusetis*, the Bishop should excuse him to the people, By this he did clearly leave the point of justification, and so of right: lastly hee promiseth hee would visite and comfort them *beneficiis compensativis*, would give them recompence for those summes he had so raised of them; which shewed that hee claimed them not as due, for then hee needed not give recompence for them.

Rot. Parl. 21. E 3. n. 16. In the one and twentieth yeere of *E.3.* a petition was exhibited in Parliament, that Levies be not made by Commission (so they bee in this case) nor other things laid upon the people unlesse they bee granted in Parliament, The Kings answer is, If any such impositions were made, it was by great necessity, and with the assent of the Prelates, Barons, and some of the Commons present; yet hee will not that such Impositions not duly made bee drawne in consequence. Here the King acknowledgeth an Imposition not to bee duly made though with the consent of the Higher House, and some of the Commons, because it was not in full Parliament; much rather hee would have thought so, if it had beene by the King alone.

King *E.* 4. (that was a rough and warlike Prince, and was more beholding to his sword in the recovery of his right to the Crowne then to the affection of the people) at a Parliament held the seventh year of his reigne made a Speech to the Commons, Sir *Iohn Say* being then Speaker, in which speech is contained very notable matter, and very pertinent to our purpose; and because the Record is not in print, I will set downe the Kings speech *verbatim* as it is entered upon the Parliament roll, and

then

then I will make a paraphrase upon it, *John Say*, and ye Sirs come to this my Court of Parliament for the Commons of this my Realme, The cause why I have cald and summoned this my present Parliament is, that I purpose to live upon mine owne, and not to charge my subjects but in great and urgent causes concerning more the Weale of themselves, and also the defence of them and of this my Realme, rather than mine owne pleasure as heretofore by Commons of this Land hath beene done, and borne unto my progenitours in time of need, wherein I trust that yee Sirs, and all the Commons of this my Land will bee as tender and kinde unto mee in such cases as heretofore any Commons have beene to any of my progenitours, And for the good will, kindenesse, and true hearts that yee have borne, continued, and shewed to mee at all times heretofore, I thanke you as heartily as I can: also I trust yee will continue in time comming, for which by the grace of God I shall bee to you as good and gracious a King, and reigne as righteously upon you as ever did any of my progenitours upon Commons of this my Realme in dayes past, and shall also in time of need apply my person for the Weale and defence of you, and of this my Realme, not sparing my body nor life for any jeopardy that might happen to the same.

Rot. parl. 7, E. 4. The record begins, *Memorandum quod die veneris 3. die Parl.*

Out of this wee may observe first the Kings Protestation to live of his owne, and not to charge his subjects; by which I gather hee did acknowledge a certain and distinct property of that which was his subjects from that which was his owne, which excludeth the right to impose at his will, for if that be admitted, the subjects property is *proprietas precaria*, not certaine how much of his, is his owne: for that is his which the King will leave him, for there is no limit or restraint of the quantity, the right being admitted, but onely the Kings will.

The second thing I observe is this, that in charging of his subjects he would confine himselfe betweene these two bounds; the one, it should bee in great and urgent causes concerning more the Weale of them, and the defence of

them and his Realme, than his owne pleasure: wherein he condemneth those occations, that grew upon excesse of private expence by over great bounty, or otherwise, and admitteth onely such as grow by reason of warres, or other such like publique causes concerning the whole State: the other bound or limit is, that those burdens should bee *secundum morem majorum*, as heretofore had beene done and borne by the Commons to his ancestours in time of need. The third thing I observe is, that hee acknowledged these burdens did proceed out of their good will and kindenesse, and not out of his right and prerogative; out of these words, that hee trusted they would bee as tender and kinde to him in such cases as heretofore any Commons had beene to his progenitours: And lastly, wee may note the recompence promised by the King to his subjects, for their good wils and kindenesse, his goodnesse and grace, his just and righteous government, the jeopardy of his body and life for their Weale and defence. Did this King assume to himselfe a right to lay burdens on his subjects at his owne will without their assents, that offered to buy them at his need with the price of his blood, the most sacred reliques in the Kingdome?

My fourth observation is that in all petitions exhibited by the Commons in Parliament, against Impositions, the very knot of their griefe, and the principall cause of their complaint hath beene expressed in those petitions, that the impositions have beene without assent of Parliament: by which is necessarily inferred, that their griefe was in point of right, not of burden.

Rot. parl. 21. *E.* 3. *nu.* 11. In 11. *E.* 3. *nu.* 11. the complaint of the Imposition of two shillings upon a sacke of wooll, two shillings upon a tonne of wine, sixe pence upon *aver de pois*, the cause of grievance expressed because it was done *sans assent de Commons*.

R. Parl. 25. *E.* 3. *n.* 22. 25 *E.* 3. *n.* 22. In a petition the Commons complaine that an imposition upon wools was set by the content of the merchants, they pray that Commissions bee not made

upon

upon ſuch ſingular grants, if they ſhoe not in full Parliament, and if any ſuch grants bee made, they may bee held as void.

17. *E.* 3. *n.* 28. The Commons in their petition informe the King, it is againſt reaſon they ſhould be charged with impoſitions ſet on by aſſent of merchants, and not in Parliament. *R. Parl.* 17. *E.* 3. *n.* 28.

My fifth obſervation is, that whenſoever any petition was exhibited againſt impoſitions, there was never any reſpect had of the quantity, but they were ever intirely abated, as well where they were ſmall, as where they were great; no requeſt even made to make them leſſe when they were great, nor excuſe made of their eaſe when they were exceeding ſmall; which ſheweth that it was not the point of burden or exceſſe was reſpected in their complaint, but the point of meere right.

25. *E.* 3. *nn.* 22. Fourty ſhillings ſet an impoſition upon a ſacke of wooll, upon complaint, all taken off, and no ſuit to be eaſed of part, becauſe it was too great. *R. Parl.* 25. *E.* 3. *nn.* 22.

36. *E.* 3. *nn.* 26. Three ſhillings and four pence upon a ſacke of wooll, all taken off, and no excuſe made for the ſmalneſſe; for 21. *E.* 3. *n.* 11. two ſhillings a ſacke, two ſhillings tonnage, and ſix pence poundage. *ibid.* 38. *E.* 3. *nn.* 26. 21. *E.* 3. *n.* 11.

50. *E.* 3. *nn.* 163. A great complaint was made in Parliament by the Commons that an impoſition of a peny was ſet upon wools for Tronage over and above the ancient due which was but a peny, and ſo the ſubject was charged with two pence. Alſo that a peny was exacted for Meſonage, which was but an halfepeny; which Impoſitions the Record doth expreſſe did amount to an hundred pounds a yeere. This petty impoſition was as much ſtood upon in point of right, as the other great one of fourty ſhillings, and was taken off upon complaint in Parliament without either juſtification or excuſe for the ſmalneſſe of it. *R. Parl.* 50. *E.* 3. *nn.* 163.

My ſixth obſervation is, that thoſe which have adviſed the ſetting on of impoſitions, without aſſent of Parliament have beene accuſed in Parliament for giving that

advice, as of a great offence in the State, and have ſuffered ſharpe cenſure and great diſgrace by it. Neither doe I finde that the quality of the perſon hath extenuated the blame, as 50. E. 3. *William* L. *Latimer* Chamberlaine to the King, and one of his private Councell was accuſed by the Commons in Parliament of divers deceits and extortions and miſdeeds, and among other things, that hee had procured to bee ſet upon wooll, wooll-fells, and other merchandiſes, new impoſitions, to wit, upon a ſacke of wooll eleven ſhillings, which the L. *Latimer* ſought to excuſe, becauſe hee had the conſent and good liking of the merchants firſt: But judgement was given againſt him that he ſhould be committed to priſon, be fined and ranſomed at the Kings will, and be put from being of the Councell, and this procuring of impoſitions to bee ſet on without aſſent of Parliament is expreſly ſet downe in the entry of the judgement for one of the cauſes of his cenſure.

Rot. parl 50. *E.* 3. *n.* 17, 18, 19, 20.

Richard Lyons a Fermor of the Cuſtomes in *London* the ſame yeere was accuſed in Parliament for the ſame offence; he pleaded, hee did it by the Kings command, and had anſwered the money to the Kings Chamber: yet was condemned and adjudged in Parliament to be committed to priſon, and all his lands and goods were ſeiſed into the Kings hand, and at the laſt the hate againſt theſe authours of impoſitions grew ſo that 50. E. 3. in the ſame Parliament, a petition was exhibited in Parliament to make this a capitall offence; the Record is very ſhort, and therefore I will ſet it downe *verbatim*. *Item prie le dit Commun que ſoit ordaine per ſtatute en ceſt preſens parliament de touts ceux que cy en avant mettent ou font par lour ſinguler profit novels impoſitions per lour authoritie demeſn accrocheants al eux eny al power de riens que ſoit eſtabli en parliament, ſans aſſent de parliament, que ils eyent judgement de vie & member, & de forfaicture.* To this rough petition the King gave a milde and temperate anſwer, *Conrge la Common ley come eſtoit al avant uſe.*

My ſeventh obſervation is the ceſſation betweene 50. E. 3. after this cenſure in Parliament, and 4. *Marie*, almoſt

moſt two hundred yeeres, during which time no King did attempt to impoſe without aſſent of Parliament: and yet we finde in the Parliament rolls, that there was not one of thoſe Kings that raigned in that time, but had impoſitions granted him upon ſit occaſion by Act of Parliament upon all goods and merchandiſes, and at divers times during their Reignes, ſometimes more, ſometimes leſſe upon the tonne and pound, but ever for a time certaine, and definite; ſo the uſe of them was not given over, but the power of impoſing was ſo clearly and undoubtedly held to bee in the Parliament, as no King went about to practiſe the contrary.

But to this ceſſation that was of great weight and credit in our evidence, a colour was given by the other ſide to avert the inference made upon it, againſt the Kings right, that is, that during that time, there was ſo great a revenue grew to the Crowne by double Cuſtome paid for all merchandiſes both in *England* and at *Calis* by reaſon of an Act of Parliament made 8. *H.* 4. which was, that no goods ſhould bee carried out of the Realme but to *Calis*, and by reaſon that the merchants paid Cuſtome both there and here for the ſame goods that in the ſeven and twentieth yeere of *Henry* the ſixth the Cuſtome of *Calis* was 68000. pounds the yeere: a great ſumme if you conſider the weight of money then, what price it bare, and by reaſon hereof Princes not delighting to charge their murmuring ſubjects but when need is, being ſo amply ſupplied otherwiſe, did not put that prerogative in practice. To this I anſwer, that if that were true that was urged, it might bee ſome probable colour of the forbearance of impoſing; but I find it to be quite contrary, and that by Record: for there was no ſuch reſtraint of all commodities not to bee tranſported to any place but *Calis*, but onely wools, wool-fells, leather, tinne, and lead, that were ſtaple wares, which by the ſtatute 27. *E.* 3. were to be tranſported thither, and not to any other place, and the ſtaple continued at that place for the moſt part from that time until long after 27. *H.* 6. but there was no

double

double Customs paid both here and there by the same owner: but the yeerly profits of the Customes of *Callais* at those times were so farre short of that which hath beene alleaged in 27. *H.*6. that it appeareth in an Act of Parliament 27. *H.*6. *cap.*2. printed in the booke at large, that the Commons doe complaine that whereas in the time of *E.*3. the Custome of *Callais* was 68000. *l. per annum*, at that time, which was 27. *H.*6. by reason of the ill usage of merchants, it was fallen to bee but 12000. pounds the yeere, so then there was great cause in that respect to have set on impositions by reason of that great abatement of Customes, and yet it was not then offered to bee done without assent of Parliament. But if you looke a little further into the extreme necessities of those times, you shall finde there never was greater cause to have strained prerogatives; for it appeareth in an Act of Parliament 28. *H.*6. that it was then declared in Parliament by the Chancellour and Treasurer who demanded reliefe of the people for the King, both for payment of his debts, and for his yeerly livelihood, that the King was then indebted 372000. pounds, which now by the weight of money amounteth to above 1100000. pounds, and that his ordinary expences was more than his yeerly revenue by 19000. pounds yeerly: so if ever there was cause to put a King to his shifts, it was then; yet wee see they did not venture to put in practice this supposed prerogative. It further appeareth in that Statute that the people among those reasons they alleaged why they were not able to retaine the King, gave this for one, that they had so often granted him tonnage and poundage upon merchandises, by which it appeareth hee tooke nothing of merchants by imposition without grant, for if he had, no doubt, they would not have stucke to have put him in minde of it. But I pray consider what became of this motion of the Chancellour and Treasurer: the proposition had depended in Parliament many yeeres; the effect was, the people intreated the King to resume all grants he had made from the beginning of his Raigne untill that time,

27. *H.*3. *ca.*2.

being

being the twenty eight yeare of his raigne, excepting such as were made upon consideration valuable, that he might so enable himselfe by that meane by which he had impoverished himselfe and the whole Kingdome: This tooke effect, and the Statute of Resumptions was thereupon made the same yeare, which Record because it is not in print, and declareth these things with great gravity and authority: I will set downe the very text of it, so much as is materiall to our purpose.

Prayen your Commons in this your present Parliament assembled to consider, That where your Chancellor of your Realme of England, your Treasurer of England, and many other Lords of your Councell, by your high Commandement to your said Commons, at your Parliament holden last at Westminster, shewed and declared the State of this your Realm, which was, that ye were indebted 372000. l. which is grievous, and that your livelihood in yearely value was but 5000. l. And forasmuch as this 5000. l. to your high and notable State to be kept, and to pay your said debts, will not suffice: therefore that your high Estate may be relieved. And furthermore it was declared, that your expences necessary to your household without al other ordinary charge came to 24000. l. yearely, which exceedeth every yeare in expence necessary over your livelihood 19000. l. Also pleaseth it your highnesse to consider, that the Commons of your said Realme be as well willing to their power, for the releeving of your Highnesse, as ever was people to any King of your Progenitors that ever raigned in your said Realme of England: but your said Commons been so impoverished, what by taking victuall to your household, and other things in your said Realme, and nought paid for it, and the quinzime by your said Commons so often granted, and by the grant of tunnage and poundage, and by the graunt of Subsidie upon Woolls, and other graunts to your Highnesse, and for lack of execution of justice, that your said poore Commons be full nigh destroyed

28. H. 6. Stat. de Resump. in turri Lond. not printed.

ſtroyed, and if it ſhould continue longer in ſuch great charge, it could not in any wiſe be had, ne borne: wherefore pleaſeth it your Highneſſe the premiſſes graciouſly to conſider, and that ye by the advice and aſſent of your Lords Spirituall and Temporall, and by the authority of this your preſent Parliament, for the conſideration of your high Eſtate, and in comfort and eaſe of your poore Commons, would take, reſume, ſeiſe and retaine in your hands and poſſeſſion all honours, &c.

This was very plaine dealing by the people with their King, and this is the ſucceſſe of the demaund of ſupply and ſupport had in thoſe daies, being required in point of gratification, without any recompence or retribution for it. Thus then wee have cleared this point, that betweene 40. *E.* 3. and 4. *Maria*, there was not one impoſition ſet without aſſent of Parliament.

Queene *Mary* in the fourth yeare of her raigne, upon the warr with France, ſet an Impoſition upon Clothes for this conſideration, that the cuſtome of Woolls was decayed, by reaſon for the moſt part they were made into Clothes, which afforded little cuſtome; for that which in Wooll, paid for cuſtome and ſubſidie 40. s. made into Cloath paid but 4. s. 4 d. To recompence this by an indifferent equality, there was ſet upon a Cloath 5. s. 8. d. which impoſition did not make up the loſſe ſuſtained in the cuſtome of Wooll, by 25. s. 4. d. in 40. s. This was *Iuſtum*, but not *Iuſſe*. This religious Prince inviron'd with infinite troubles in the Church and Common-wealth, and much impoveriſhed by her devotion, in renouncing the profits of the Church lands that were in the Crowne by the ſuppreſſion, was the firſt that made digreſſion from the ſteps of her worthy Progenitors, in putting on that impoſition without aſſent of Parliament; for that very conſideration of the loſſe of cuſtome, by turning of Wooll to Clothing, came into treatie in the 24. yeare of *E.* 3. when the art of clothing began firſt to be much practiſed in this Kingdome, and then

in the recompence of the losse so sustained in the decay of custome of Woolls, there was set upon a Cloath by act of Parliament above the olde custome, 14. d. for a Denizen, and for an Alien, 24. d. This is recited in a Record in the Exchequer, 48. *E. 3. fo. 2. R. Thes. in origin.* But I pray you examine how this imposition of Queen *Mary* was digested by the people. We see in the Case in my Lord *Dyer* 1. *El. fo.* 165. that the Merchant found great griefe at it, and made exclamation and suit to *Q. Eliz.* to be unburdened of it: The very reason of their griefe expressed in that case is, because it was not set on by Parliament, but by the Queenes absolute power; So that was the ground of that complaint, the very point of right.

Orig. in Scacc. 48. E. 3. R. 2. 1. El. R. Thes. 1. El. Dyer fo. 165.

This cause was referred to all the Judges, to report whether the Queene might set on this imposition without assent of Parliament: They divers times had conference about it, but have not yet made report for the King, which is an infallible presumption, that their opinions were not for him, for it is a certain rule among us, that if a question concerning the Kings prerogative, or his profit be referred to the Judges, if their opinions be for the King, it will bee speedily published, and it were indiscretion to conceale it, but if there be no publication, then we make no doubt, but that their opinions are either against the King, or at least they stick, and give none for him.

The same Queene *Mary* upon restraint of bringing in of French commodities occasioned by the then wars with France, set an imposition upon Gascoigne Wines, which continueth yet: So the Kingdome of England by the injustice of that Prince was clogged with those two heavy impositions contrary to the right of the Kingdome, and the acts of her Progenitors.

Queene *Elizabeth* set on that upon sweet Wines, which grew also upon the occasion of the troubles with Spaine. That upon Allome was none, it was rather a Monopolie to Master *Smith* the Customer of London, for the ingrossing

of all Allomes into his owne hands, for which priviledge he gave a voluntary impoſition upon that commodity: It was like the priviledge granted to *Iohn Pechey* of the ſweet Wines by *E.* 3. for which the Patentee was called into the Parliament houſe, 50. *E.* 3. and was there puniſhed, and his Patent taken away and cancelled.

What impoſitions have been ſet on in the Kings time, I need not expreſſe, they are ſet downe particularly in the booke of rates that is in print, they are not eaſily numbered: the time for which they are raiſed is not ſhort, the Patent prefixed to that booke bearing date 28. *Iulii* 6. *Iacobi* will inſtruct you ſufficiently in that point; they be limited to the King, his heires and ſucceſſors: which I ſuppoſe is the firſt eſtate of Fee ſimple of impoſitions that ever man read of.

My eighth and laſt obſervation is upon tunnage and poundage given to the King of this Realme, upon Wares and Merchandizes exported and imported, which is an impoſition by act of Parliament, and as it will appeare, was given out of the peoples good will, as a very gratification to the King, to enjoyne him thereby from the deſire of voluntary impoſitions, and to conclude him by that gift in Parliament from attempting to take any other without aſſent of Parliament, for after the ceaſing of voluntary impoſitions, theſe Parliamentary ones were frequent in the times of the King that ſucceeded, but they were never given but for yeares, with expreſſe caution how the money ſhould be beſtowed, As towards the defence of the Seas, protection of traffique, or ſome ſuch other publique cauſes: ſometimes ſpeciall ſequeſtrators made by the act of Parliament, by whoſe hands the money ſhould be delivered, As 5. *R.* 2. *cap.* 3. in a printed Statute. The rates that were given were very variable, ſometimes ii. s. tunnage and vi. d. poundage, as 7. *R.* 2. iii. s. tunnage, and xii. d. poundage, 10. *R.* 2. which grants were not to endure the longeſt of them above a yeare, xviii. d. tunnage, vi. d. poundage, in

5. *R.* 2.
Rot. Parl. 7. *R.* 2 *n.* 13.
10. *R.* 2. *n.* 12.
7. *R.* 2. *n.* 12.

17. *R.* 2.

17. *R.* 2. iii. s. tunnage, and xii. d. poundage granted to *H.* 4. in the thirteenth yeare of his raigne for a certaine time, in which Statute there is this clause, That this aide in time to come should not be taken an example to charge the Lords and Commons in manner of Subsidie, unlesse it be by the wills of the Lords and Commons, and that by a new grant to be made in full Parliament in time to come. This clause in good and proper construction may be taken to be a very convention betweene the King and his people in Parliament, that he should not from thenceforth, nor any of his Successors set on impositions without assent of Parliament. The like imposition was granted to *H.* 5. in the first yeare of his raigne for a short time towards the defence of the Realme, and safeguard of the Sea upon condition expressed in the act, that the Merchants Denizens, and estrangers comming into the Realme with their Merchandizes, should be well and honestly used and handled, paying the said Subsidie as in the time of his Father, and his noble Progenitors Kings of England without oppression, or extortion: In the end of which act the Commons protested, being bound by any grant in time to come, for the purposes aforesaid. *Rot. parl.* 1. *H.* 5. n. 17.

H. 6. in the one and thirtieth yeare of his raigne, had tunnage and poundage given him for his life. *E.* 4. had it given him the third yeare of his raigne, as it appeareth in a Statute 12. *E.* 4. *cap.* 3. *H.* 8. in the sixth yeare of his raigne, and all since in the first yeare of their raignes have had it given them for terme of their life, and being now so certainly setled in it, do reach further at that fro which they are in conscience and honour excluded by this voluntarie gratification: For can any man give me a reason, why the people should give this imposition of tunnage and poundage above the due custome upon all commodities, if the King by his prerogative might set on impositions without assent of Parliament; and were not that a weake action in a King, to take that of his people as a benevolence *Rot. parl.* 31. *H.* 6. 12. *E.* 4. c. 3. 6. *H.* 8. c. 12. 1. *E.* 6. c. 13. 1. *Ma.* c. 18. 1. *El.* c. 19. 1. *Iac.* c. 33.

from them, with limitation of the same, and in what it should be imployed, and how they will be used for it, and for what time he shall have it, which he might justly take without their consents, unclogged of these impleading incombrances.

The Statute of tunnage and poundage made in our times that are altogether inclined to flattery, doe yet retaine in them certain shewes and rumors of those ancient liberties, although indeed the substance be lost, as in the Stat. 1. *Iac.* *cap.* 33. we declare that we trust, and have sure confidence of his Majesties good will towards us, in and for the keeping, and sure defending of the Seas, and that it will please his highnesse, that all Merchants, as well Denizens as Strangers comming into this Realme, be well and honestly intreated and demeaned for such things thereof Subsidie is granted, as they were in the time of the Kings Progenitors and Predecessors without oppression to them to be done. By this clause as it now continueth, the true intent of this Statute appeareth to be, that there ought no other imposition be laid upon Merchants besides these given by this Statute, and this intention hath been well interpreted by use and practise from the time of *E.* 3. to the time of Queene *Mary*, as before is declared.

1. *Iac.* c. 33.

This much of this last reason made from observation, and the action of our Nation. I will answer now such maine objections as have been made against the peoples right, and have not been touched by me *obiter* in my passage through this discourse.

That which hath been most insisted upon is this, that the King by his prerogative Royall hath the custodie of the Havens and Ports of this Island, being the very gates of this Kingdome; that he in his royall function and office is only trusted with the keyes of these gates; that he alone hath power to shut them, and to open them when, and to whom he in his Princely wisdome shall see good: that by the Law of England he may restraine the persons of any from

from going out of the Land, or from comming into it: That he may of his owne power and discretion prohibite exportation and importation of goods and merchandizes; and out of this prerogative and preheminence, the power of imposing, as being derivative, doth arise and result, For *Cui quod maius est, inest, & ei quod est minus licitum est*: So their reason briefly is this, the King may restraine the passage of the person, and of the goods; therefore he may suffer them not to passe, but *sub modo*, paying such an imposition for his sufferance as he shall set upon them: for the grounds and propositions laid in this objection, I shall not be much against any one of them; others of them must be qualified ere they be confessed, but the inference and argument made upon them, I utterly deny; for in it there is *mutatio hypothesis*, and a transition from a thing of one nature, to a thing of another; As the premisses are of a power in the King only fiduciary, and in point of trust and government, the conclusion inferres a right of interest and gaine; Admit the King hath *Custodiam portuum*, yet hee hath but the custody, which is trust, and not *Dominium utile*; He hath power to open and shut upon consideration of publike good to the people and State, but not to make gaine and benefit by it: The one is protection, the other is expilation. The Ports in their owne nature are publike free for all to goe in and out, yet for the common good, this liberty is restrainable by the wisdome and policy of the Prince, who is put in trust to discerne the times when this naturall liberty shall be restrained. In 1. *H.* 7. *fo.* 12. in the case of the Florentines for their Allome, the Lord chiefe Justice *Hussey* doth write a Case, that in the time of *E.* 4. a Legate from the Pope being at Calice to come into England, it was resolved in full Councell (as the booke saith) before the Lords and Judges that he should not have licence to come into England unlesse he would take an oath at Calice, that he would bring nothing with him that should be prejudiciall to the King and his Crowne.

Portus sunt Publici.

1. *H.* 7. 10.

The

The King by the Common Law may ſend his Writ, *Ne exeas regnum* to any ſubject of the Realme, but the ſurmiſe of the Writ is, *Quia datum eſt nobis intelligi, quod tu verſus partes exteras abſq; licentia noſtra clam deſtinas te divertere, & quamplurima nobis & corona noſtra preiudicia proſequi*, Fitzh. N. B. 85. b. So in point of government, and Common good of the Realme, he may reſtraine the perſon: but to conclude, therefore he may take money, not to reſtraine, is to ſell government, truſt, and common juſtice, and moſt unworthy the divine office of a King. But let us compare this power of the King in forraigne affaires, with the like power he hath in Domeſtique government. There is no queſtion but that the King hath the cuſtodie of the gates of all the Townes and Cities in England, as well as all the Ports and Havens, and upon conſideration of the Weal publike may open and ſhut them at his pleaſure, As if the infection of the ſickneſſe be dangerous in places vicine to the City of London, the King may command that none from thoſe places ſhall come into the City: May he therefore ſet an impoſition upon thoſe that he ſuffereth to come into the City? So, if by reaſon of infection he forbid the bringing of Wares, and Merchandizes from ſome Cities or Townes in this Kingdome to any great Faire or Mart, Shall he therefore reſtraine the bringing of Goods thither unleſſe money be given him by way of impoſition?

Fitzh. N. B. 85. b.

The King in his diſcretion in point of equity, and for qualifying the rigour of the Law, may enjoyne any of his Subjects by his Chauncellor from ſuing in his Court of Common Law: May he therefore make a benefit by reſtraining all from ſuit in his Courts, unleſſe they pay him an impoſition upon their ſuits? In 2. *E.* 3. in the caſe of the Earle of Richmond before cited, the King had granted unto the men of great Yarmouth, that all the Ships that arrived at the Port of Yarmouth, which conſiſted of three ſeverall Ports, great Yarmouth, little Yarmouth, and Gerneſton ſhould arrive all at great Yarmouth, and at no other place

2. E. 3. 7.

place within that Port. The lawfulneſſe of this Patent being in queſtion in the Kings Court, it was reaſoned in the Kings behalfe for the upholding of the graunt, as it is now, that the King had the cuſtodie of the Port, he might reſtrain Merchants from landing at all in his Kingdome: Therefore out of the ſame power might appoint where, and in what Haven they ſhould land, and in no other; This Patent was demurred on in the Kings Bench, as being granted againſt the Law, but the Caſe depending was adjourned into Parliament for the weight and conſequence of it, and there the Patent was condemned, and a Law made againſt ſuch, and the like graunts. 9.E.3.cap.1.

The Preſidents that were vouched for maintenance of this power of reſtraint in the King, were foure, produced almoſt in ſo many hundred yeares, whereof two were in the ſecond yeare of E. 1. one in the tenth yeare of E. 3. another in the ſeventeenth yeere of H.6. ſince which time wee heare of none but by Act of Parliament, as they had beene uſually and regularly before. To theſe I will give anſwer, out of themſelves, out of the common law, out of divers ſtatutes, and out of the practiſe of the Common-wealth. The reſtraint in the time of E.1. the one of them was to forbid the carrying of wooll out of the Realme, the other was to forbid all Traffique with the Flemings. That of 10. E.3. was to reſtraine the exportation of ſhip-timber out of the Realme. That of 17. H.6. to prohibite Traffique with the ſubjects of the Duke of Burgundy. Theſe preſidents are rare, yet they have in them inducements out of publique reſpects to the Common-wealth; for the rule of Common law in this caſe, I take it to bee as the reverend Judge Sir Anthony Fitzherbert holds it in his writ of Ne exeat Regnum in Nat. Br. that by the Common law any man may goe out of the Kingdome, but the King may upon cauſes touching the good of the Common-wealth reſtraine any man from going by his Writ or Proclamation, and if hee then goe, it is

Rot.parl.2.E.1.n.16. Rot.fin. 2.E.1.n.17. Rot.clauſ.10.E.3.dor.31. Rot.clauſ.17.H.6.in dorſ.

Fitzh.N.B.85.

a contempt. This opinion of his is confirmed by the booke, 1. *Eliz. fol.* 165. *Dier.* 12. & 13 *Eliz. Dier.* 296. In like manner if a subject of *England* be beyond sea, and the King send to him to repaire home, if hee doe it not, his lands and goods shall bee seised for the contempt, and this was the case of *William de Brittain* E. of *Richmond*, 19. *E.* 2. Hee was sent by the King into *Gascoine* on a message, and refused to returne, for which contempt his goods, chattels, lands, and tenements were seised into the Kings hands: the Record is cited, 2. & 3. *Ph.* & *M.* in my *L. Dier. fol.* 128. *B.* and the law there held to bee so at that time upon a question moved in the Queenes behalfe against divers that being beyond the seas refused to returne upon commandment sent unto them to that purpose: the same is againe for law confirmed in the Dutchesse of *Suffolke*, case 2. *Eliz. Dier.* 176. but the Common law was altered in this point by the statute of 5. *R.* 2. *cap.* 2. by which the passage of all people is defended that they may not goe without licence except the Lords and other great men of the Realme, merchants, and souldiers: so for the merchants which are the people dealt withall in the businesse in hand, the Common law remaineth as it was before the statute, and so it was held, 12. *El. Dier.* 196. where the case was, An English merchant being a Papist went over sea, and being there, did settle himselfe to remaine there for enjoying the freedome of his conscience: it was moved here in *England*, that his going without licence should bee a contempt, because hee went not to traffique as a merchant, but for the cause of Religion: it was resolved, no such averment would be taken in this case, for that the very calling and vocation of being a merchant did give him liberty to goe out of the Kingdome when hee would, and therefore the secret intent of his going was not to bee enquired after, *Sed lex inspicit quod versimiliter*. Therefore it was in this case held no contempt, but at this day the law is as it was before

Dier. 1. *El.* 165.
Dier. 13. *El.* 296.
19. *E.* 3.
2. & 3. *P.* & *M.*
Dier. 128.
Dier. 2. *El.* 176.
5. & 2. *cap.* 2.
Dier. 12. *El.* 196.

before, 5. *R.*2 *cap* 2. for that ſtatute is repealed 4. *Iac.* *cap.* 1. And all men whatſoever are now at liberty by the Common law to paſſe out of the Realme. There is onely againſt this inconvenient liberty a Proclamation dated at *Weſtminſter*, 9. *Iul.* 5. *Iac.* To the very ſame effect in point of reſtraint of paſſage with the ſtatute of *R.* 2. So the ſubject is in this much the more at eaſe and liberty than he was before: that his going over ſea without licence doth not induce any forfeiture, but onely incurreth the cenſure of a contempt, and therefore it were to bee wiſhed that ſome firme law might bee made in the caſe both for the execution of ſo good a point of policy, and for the more quiet of the State, in knowing the certainty of the puniſhment for the offence.

4. *Iac. cap.* 1.

Proclamatio. 9. *Iul.* 5. *Iac.*

This liberty and freedom of merchants hath been ſtrengthened and confirmed by many notable lawes before recited, as 14. *E.* 3. *ſt.* 2. *c.* 2. 15. *E.* 3 *ſt.* 2. *c.* 5. 18. *E.* 3. *ſt.* 1. *c.* 3. and divers other, and therefore though it bee admitted that the King may reſtraine perſons and goods, yet it may well bee denied, that he hath power of himſelf alone without aſſent of Parliament ſimply and indefinitely to reſtraine all traffique in generall, or to ſhut up all the havens and ports, and to barre the vent and iſſuing of wares and merchandiſes of the whole Kingdome, as appeareth plainely that this hath been done this three hundred yeers or near thereabouts by Act of Parliament onely, and that the Kingdome of *England* made this matter of Traffique ſo tender a caſe to deale in, as that it hath ever held it a matter fit for the conſultation of the great Councell of the Kingdome, and for no other.

14. *E.* 3. *ſt.* 2. *c.* 2. 15. *E.* 3. *ſt.* 2. *c.* 5. 18. *E.* 3. *ſt.* 1. *c.* 3.

In 11. *E.* 3. the exportation of wools was prohibited by Act of Parliament, in which ſtatute there was this clauſe, untill that by the King and his Councell it bee thereof otherwiſe provided: which power ſo given to the King to be uſed for the good of the Common-wealth gave occaſion to him to abuſe it to his profit and commodity by giving licences of tranſportation to all that would give

11. *E.* 3. *cap.* 1.

fourty shillings upon a sacke of woull above the due Custome. This appeareth in the Records in the Exchequer, 13. E. 3. R. Thes. vol. 2. 13. E. 3. Rot. 2. Rem. Thes. I will describe the Record that you may perceive the ground of it the better, *Rex collectoribus Custume in portu magne Iermouth salutem. Quia concessimus dilecto & fideli nostro Hugoni de Wriothsley, quod ipse viginti & septem saccos lane & dimid. de lanis suis propriis in portu predicto cariare & eas usq; Antwerpe ad stapulam nostram ibidem ducere possit, salvendo ibidem dilecto clerico nostro Willielmo de Northwell custodi guardrobe nostre 40. s. pro quolibet sacco pro custuma & subsidio inde nobis debitis, &c. vobis mandamus quod predict. Hugon. dictos viginti septem saccos lane & dimid. in portu predicto cariare permittatis, &c.* And another the same yeere. 13. E. 3. rot. 12. R. Thes. *Rex collectoribus custume, &c. Cum nuper ordinaverimus quod passagium lanarum, &c. apertum existeret, & quod sigillum nostrum quod dicitur Coket, quod prius claudi & sub serra custodiri mandavimus aperiretur, & apertum teneretur, ideo vobis mandavimus quod sigillum predictum in portu predicto aperiri, & apertum teneri faciatis, & omnes illos qui hujusmodi lanas cariare & ducere velint permittatis, receptis prius ab iisdem viz. de mercatoribus & aliis indigenis 40. s. de quolibet sacco lane.* Divers other such sales of traffique occasioned by this parliamentary restraint were made betweene 11. E. 3. that the restraint was made, and 14. E. 3. that this inconvenience being espied, the sea was opened by statute, and the restraint removed 14. E. 3. stat. 2. cap 2. 15 E. 3. cap. 5. stat. 2. And this fourty shillings so exacted was complained of, as an imposition in Parliament, and the occasion and the effect were both taken away together by Act of Parliament, 14. E. 3. st. 2. c. 2. 15. E. 3. c. 5. f. 2. 14. E. 3. cc. 21. f. 1. 14. E. 3. stat. 1. cap 21. & stat. 2. cap. 1.

It followed in all Kings times sithence the death of E. 3. that this opening and shutting of the havens, restraining and enlarging of traffique was done by Act of Parliament. 5. R. 2. c. 2. f. 2. I will give one instance in the Raigne of every King, 5. R. 2. cap. 2. stat. 2. For the passage of woull, wool-fells, and leather,

leather, 6. *H.4. cap.4.* For the traffique and commerce with merchants aliens, 2. *H.5. cap.6. stat.2.* For the restraint of staple commodities to places certaine, and for the traffique of the merchants of the west, 27. *H.6. cap.1.* that is enacted in Parliament which is contained in the Proclamation, 17. *H.6.* cited for a president, that is, because the Duke of *Burgundy* made an ordinance whereby the traffique of the English Nation was restrained, that therefore the Englishmen should not traffique with the subjects of the Duke of *Burgundy*. The same thing enacted upon the like occasion 4. *E.4. c.1.* 19. *H.7. c.21.* the importation of divers commodities forbidden as being prejudiciall to the manufactures within the Realme. 6. *H.8. cap.12.* The exportation of *Norfolk* woolls out of the Realme forbidden. 26. *H.8. cap.10.* Power is given to the King to order and dispose of the traffique of merchants at his pleasure, and the reason is given, because otherwise the leagues and amities with forreigne Princes might bee impeached by reason of restraint made by divers statutes then standing on foote, whereby it appeareth that it was not then taken to bee law, that the King had an absolute power in himselfe to order and dispose of the course of traffique without helpe of a statute. 2. *E.6. cap.9.* Exportation of leather restrained. 1. & 2. *Ph. & Ma.* The exportation of herring, butter, cheese, and other victuals forbidden. 18. *Eliza. cap.8.* the exportation of tallow, raw hides, leather. So in all times no use of Proclamations in matters of this nature, but Acts of Parliament still procured: wherefore in mine opinion it behoveth them that doe so earnestly urge this argument, (the King may restraine traffique, therefore may impose,) to prove better then they have done, that the King may restraine traffique of his owne absolute power: for as the naturall policy and constitution of our Common-wealth is, wee may better say, that is law which is *de more gentis*, then that which floweth from the reason of any man guided by his

6.H.4.c.4.
2.H.5.c.6.§.2.
27.H.6.cap.1.
4.E.4.cap.1.
19.H.7.cap.21.
6.H.8.cap.12.
26.H.8.ca.10.
2.E.6.cap.9.
1. & 2. P. & M.c.5.
18.El.cap.8.

generall notion and apprehension of power regall *in genere*, not *in individuo*.

The last assault made against this right of the Kingdome was an objection grounded upon policy, and matter of State, as that it may so fall out that an imposition may bee set by a forreigne Prince that may wring our people, in which case the counterpoise is, to set on the like here upon the subjects of that Prince, which policy if it be not speedily executed, but stayed untill a Parliament, may in the meane time prove vaine and idle, and much damage may bee sustained that cannot afterwards be remedied.

This straine of policy maketh nothing to the point of right; our rule is in this plaine Common-wealth of ours, *Oportet neminem esse sapientiorem legibus*: if there bee an inconvenience, it is fitter to have it removed by a lawfull meanes, than by an unlawfull: but this is rather a mischiefe than an inconvenience, that is a prejudice in present to some few, but not hurtfull to the Common-wealth: and it is more tolerable to suffer an hurt to some few for a short time, than to give way to the breach and violation of the right of the whole Nation: for that is the true inconvenience, neither need it bee so difficult or tedious to have the consent of the Parliament, if they were held as they ought, or might be; but our surest guide in this will bee the example of our ancestours in this very case, and that in the time of one of the most politique Princes that ever reigned in this Kingdome. 7. *H.*7. *cap.*7. You shall finde an Act of Parliament, in which it was recited that the Venetians had set upon the English merchants that laded Malmeseyes at *Candy* foure duckets of gold upon a But, which in sterling was eighteene shillings the But. It was therefore enacted that every merchant stranger that brought Malmesey into this Kingdome should pay eighteene shillings the But over and above the due Custome used, this imposition to indure untill they of *Venice* had set aside that of foure duckats the But upon the Englishmen.

7. H. 7. cap. 7.

Much

Much hath beene learnedly uttered upon this argument in the maintenance of the peoples right, and in answering that which hath beene preſſed on the contrary, but my meaning is not to expreſſe in this diſcourſe all that hath or may bee ſaid on either ſide, but onely to make a remembrance ſomewhat larger of that which I my ſelfe offered as my *ſymbolum* towards the making up of this great reckoning of the Common-wealth, which if it bee not well audited, may in time coſt the ſubjects of *England* very deare. My hope is of others that laboured very worthily in this buſineſſe, that they will not ſuffer their paines to die, and therefore I have forborne to enter into their province. I will end with that ſaying of that true and honeſt Counſellour *Philip Comines* in his 5th. booke the 18. chap.

That it is more honourable for a King to ſay, I have ſo faithfull and obedient ſubjects, that they deny me nothing I demand, than to ſay, I levie what me liſt, and I have priviledges ſo to doe. Ph. Comines l. 5. c. 18.

After

After the Kings right to impose had beene thorowly examined in Parliament, and there determined not to be in him alone, without assent of Parliament, among other Petitions of grievance given unto his Majestie, this hereafter was concerning impositions.

THE policie and constitution of this your Majesties kingdome appropriates unto the Kings of this Realme, with assent of Parliament, as well the soveraigne power of making Lawes, as that of taxing or imposing upon the subjects goods or merchandizes, wherein they justly have such a propriety, as may not without their consent be altered or changed: This is the cause that the people of this kingdome, as they have ever shewed themselves faithfull and loving to their Kings, and ready to aide them in all their just occasions, with voluntary contributions: so have they been ever carefull to preserve their owne liberties and rights when any thing hath been done to prejudice or impeach the same: And therefore when their Princes, either occasioned by war, or by their over great bounty, or by any other necessity, have without consent of Parliament set on impositions either within the Land, or upon commodities exported or imported by the Merchants, they have in open Parliament complained of it, in that it was done without

their conſents, and thereupon never failed to obtaine a ſpeedy and full redreſſe without any claime made by the Kings, of any power or prerogative in that point. And though the Law of propriety be originall and carefully preſerved by the common Lawes of this Realme, which are as ancient as the Kingdome it ſelfe, yet thoſe famous Kings for the better contentment and aſſurance of their loving ſubjects agreed that this olde fundamentall right ſhould be further declared and eſtabliſhed by act of Parliament, wherein it is provided that no ſuch charge ſhould ever be laid upon the people without their common conſents, as may appeare by ſundry Records of former times.

We therefore your Majeſties moſt humble Commons aſſembled in Parliament, following the example of this worthy care of our anceſtors, and out of our duty to thoſe for whom we ſerve, finding that your Majeſtie without advice and conſent of your Lords and Commons, hath lately in time of peace ſet both greater impoſitions, and farre more in number then any your noble anceſtors did ever in time of Warre, doe with all humility preſent this moſt juſt and neceſſary petition unto your Majeſtie, that all impoſitions ſet without aſſent of Parliament, may be quite aboliſhed and taken away, And that your Majeſtie likewiſe in imitation of your royall progenitors will be pleaſed, that a Law in your time, and during this Seſſion of Parliament may be alſo made to declare that all impoſitions of any kinde ſet, or to be ſet upon your people, their goods or merchandizes, ſave only by common conſent in Parliament are, and ſhall be voide: Wherein your Majeſty ſhall not only give your ſubjects great ſatisfaction in point of their right, but alſo bring exceeding joy and comfort to them who now ſuffer, partly through the abating of the price of native commodities, and partly through the raiſing of all forraigne, to the overthrow of Merchants and Shipping, the cauſing of a generall dearth, and decay of all wealth among your people, who will be thereby no leſſe diſcouraged then diſabled to ſupply your Majeſtie when occaſion ſhall require.

FINIS.